

8-15-2016

State v. Morgan Clerk's Record Dckt. 44273

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IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,)	
)	SUPREME COURT NO. 44273
Plaintiff-Respondent,)	
)	
v.)	
	)	Minidoka County Case CR2010-550
Dustin Jade Morgan,)	
)	
Defendant-Appellant.)	
_____)	

Appeal from the Fifth Judicial District, Minidoka County, Idaho

HONORABLE Jonathan Brody, presiding,

Sara Thomas, State Public Defender, P.O. Box 2816, Boise, Idaho 83707

Honorable Lawrence G. Wasden, Attorney General, PO Box 83720, Boise, Idaho 83720-0010

State of Idaho vs. Dustin Jade Morgan

Date	Code	User	Judge
2/24/2010	NCRF	JODY	New Case Filed - Felony
	PROS	JODY	Prosecuting Attorney Assigned Lance D Stevenson
	CRCO	JODY	Criminal Complaint
	AFPC	JODY	Affidavit Of Probable Cause for Warrant of Arrest
	WARI	JODY	Warrant Issued - Arrest Bond amount: 10000.00 Defendant: Morgan, Dustin Jade
	XSEA	JODY	Case Sealed
9/14/2010	MISC	BEA	Ltr from def requesting PD
9/15/2010	ORPD	BEA	Defendant: Morgan, Dustin Jade Order Appointing Public Defender Public defender Mini-Cassia Public Defender
	MISC	BEA	e-mailed file to PD's office
9/20/2010	NOTC	JANET	Notice of defendant's request for discovery
10/4/2010	MOTN	JODY	Motion to Permit Attorney to Withdraw
10/5/2010	ORDR	JODY	Order Permitting Attorney to Withdraw-Clayne Zollinger apt'd
	ORPD	JODY	Defendant: Morgan, Dustin Jade Order Appointing Public Defender Public defender Clayne S. Zollinger Jr.
10/21/2010	REQU	AURELIA	Request For Discovery
2/12/2014	CHJG	ISC2	Change Assigned Judge (batch process)
5/21/2015	WART	JODY	Warrant Returned Defendant: Morgan, Dustin Jade-served 1/21/10 in Montana; was subsequently released from MT prison and rearrested on our warrant 5/18/15
	XUNS	JODY	Case Un-sealed
	ARRN	JODY	Arraignment / First Appearance
	CMIN	JODY	Court Minutes-bond \$10,000.00; Ct conts Mr. Zollinger's apt
	ORDR	JODY	Order-Preliminary 6/3/15 1:30PM
	HRSC	JODY	Hearing Scheduled (Preliminary 06/03/2015 01:30 PM) Elude an Officer/DWP 3rd Offense
		JODY	Notice Of Hearing
6/4/2015	CONT	JODY	Hearing result for Preliminary scheduled on 06/03/2015 01:30 PM: Continued Elude an Officer/DWP 3rd Offense (Mr. Jensen to submit substitution/waiver of time)
	APPR	JODY	Defendant: Morgan, Dustin Jade Appearance Through Attorney Kent D. Jensen
	SUBC	JODY	Substitution Of Counsel
	MOTN	JODY	Motion to Continue Preliminary Hearing
	WATP	JODY	Waiver of Time of Preliminary Hearing

State of Idaho vs. Dustin Jade Morgan

Date	Code	User	Judge
6/4/2015	HRSC	JODY	Hearing Scheduled (Preliminary 06/17/2015 01:30 PM) Elude an Officer/DWP 3rd Offense
		JODY	Notice Of Hearing
6/12/2015	NOTC	JODY	Notice of Service
6/17/2015	CONT	JODY	Hearing result for Preliminary scheduled on 06/17/2015 01:30 PM: Continued Elude an Officer/DWP 3rd Offense
	HRSC	JODY	Hearing Scheduled (Preliminary 07/01/2015 01:30 PM) Elude an Officer/DWP 3rd Offense
		JODY	Notice Of Hearing
6/23/2015	MOTN	JODY	Motion for Transport
6/30/2015	MOTN	JODY	Motion to continue Preliminary Hearing
	ORDR	JODY	Order to Continue Hearing
	CONT	JODY	Hearing result for Preliminary scheduled on 07/01/2015 01:30 PM: Continued Elude an Officer/DWP 3rd Offense
	HRSC	JODY	Hearing Scheduled (Preliminary 07/23/2015 10:00 AM) Elude an Officer/DWP
	RETN	JODY	Return of Service- 06/22/2015 7:55 pm S. Burwell
7/2/2015	SUBR	DOMINIK	Subpoena Returned
7/6/2015	MOTN	JODY	Motion for Transport
	ORDR	JODY	Order for Transport
7/23/2015	WAPH	BEA	Waiver of Preliminary Hearing
	ORDR	JODY	Order
	PHWV	JODY	Hearing result for Preliminary scheduled on 07/23/2015 10:00 AM: Preliminary Hearing Waived (bound Over) Elude an Officer/DWP
7/24/2015	INFO	LAURIE	Information
	HRSC	JANET	Hearing Scheduled (Arraignment 08/03/2015 09:00 AM)
		JANET	Notice Of Hearing
7/30/2015	RESP	LAURIE	Response to Request for Discovery
8/3/2015	CMIN	JANET	Court Minutes Hearing type: Arraignment Hearing date: 8/3/2015 Time: 9:21 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson

State of Idaho vs. Dustin Jade Morgan

Date	Code	User	Judge
8/3/2015	ARRN	JANET	Hearing result for Arraignment scheduled on 08/03/2015 09:00 AM: Arraignment / First Appearance
8/11/2015	HRSC	JANET	Hearing Scheduled (Status 09/14/2015 09:00 AM)
	HRSC	JANET	Hearing Scheduled (Pretrial Conference 11/09/2015 09:00 AM)
	HRSC	JANET	Hearing Scheduled (Jury Trial 11/18/2015 09:00 AM)
		JANET	Notice Of Hearing
8/12/2015	ORDR	JANET	Pretrial Scheduling Order
8/17/2015	MOTN	JANET	Motion to dismiss
	MEMO	JANET	Memorandum in support of motion to dismiss
	HRSC	JANET	Hearing Scheduled (Motion 08/24/2015 01:30 PM)
8/18/2015	NOTC	JANET	Notice of hearing
8/20/2015	BNDS	JANET	Bond Posted - Surety (Amount 10000.00)
8/21/2015	MISC	JANET	Objection to motion to dismiss
8/24/2015	CMIN	JANET	Court Minutes Hearing type: Motion Hearing date: 8/24/2015 Time: 2:15 pm Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson
	INHD	JANET	Interim Hearing Held - Motion to Dismiss held 8-24-15 @ 1:30 p.m.
8/26/2015	HRSC	JANET	Hearing Scheduled (Motion 08/31/2015 03:00 PM) Continued Motion to dismiss
		JANET	Notice Of Hearing
8/31/2015	CONT	JANET	Hearing result for Motion scheduled on 08/31/2015 03:00 PM: Continued Continued Motion to dismiss
	MOTN	JANET	Motion to continue
	ORDR	JANET	Order to continue (and notice of hearing)
9/1/2015	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 09/08/2015 09:00 AM)
9/8/2015	HRVC	JANET	Hearing result for Motion to Dismiss scheduled on 09/08/2015 09:00 AM: Hearing Vacated
9/11/2015	MISC	JANET	Objection to Response

State of Idaho vs. Dustin Jade Morgan

Date	Code	User	Judge
9/14/2015	CMIN	JANET	Court Minutes Hearing type: Status Hearing date: 9/14/2015 Time: 9:33 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson Jonathan Brody
	ADVS	JANET	Hearing result for Status scheduled on 09/14/2015 09:00 AM: Case Taken Under Advisement on Motion to Dismiss Jonathan Brody
9/30/2015	ORDR	LAURIE	Order Denying in Part and Granting In Part Defendant's Motion to Dismiss Jonathan Brody
10/30/2015	HRSC	LAURIE	Hearing Scheduled (Motion 11/12/2015 09:00 AM) Jonathan Brody
	MOTN	JANET	Motion to correct record and reconsider or in the alternative defendant's second motion to dismiss Jonathan Brody
	MEMO	JANET	Memorandum in support of motion to reconsider or in the alternative second motion to dismiss Jonathan Brody
	NOTC	JANET	Notice of hearing Jonathan Brody
11/6/2015	MISC	JANET	Objection to Motion to Correct record and reconsider or in the Alternative Defendant's second motion to dismiss Jonathan Brody
11/9/2015	CMIN	JANET	Court Minutes Hearing type: Pretrial Conference Hearing date: 11/9/2015 Time: 9:40 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson Jonathan Brody
	INHD	JANET	Hearing result for Pretrial Conference scheduled on 11/09/2015 09:00 AM: Interim Hearing Held Jonathan Brody
	HRVC	JANET	Hearing result for Jury Trial scheduled on 11/18/2015 09:00 AM: Hearing Vacated Jonathan Brody
11/12/2015	CMIN	JANET	Court Minutes Hearing type: Motion Hearing date: 11/12/2015 Time: 9:10 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson Jonathan Brody

State of Idaho vs. Dustin Jade Morgan

Date	Code	User	Judge
11/12/2015	INHD	JANET	Hearing result for Motion scheduled on 11/12/2015 09:00 AM: Interim Hearing Held
	LODG	JANET	Lodged - Copy of Montana Case #CR-2010-13 and CR-2010-81 Warrant of Arrest
	LODG	JANET	Lodged - Copy of Montana Case #CR-2010-34 and CR-2010-550 Warrant of Arrest
11/18/2015	ORDR	JANET	Order denying defendant's motion to reconsider
12/3/2015	HRSC	JANET	Hearing Scheduled (Status 12/14/2015 09:00 AM) Reschedule for trial?
		JANET	Notice Of Hearing
12/14/2015	CMIN	JANET	Court Minutes Hearing type: Status Hearing date: 12/14/2015 Time: 9:35 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson
	INHD	JANET	Hearing result for Status scheduled on 12/14/2015 09:00 AM: Interim Hearing Held Reschedule for trial?
12/15/2015	HRSC	JANET	Hearing Scheduled (Change of Plea 01/04/2016 09:00 AM)
		JANET	Notice Of Hearing
12/23/2015	HRSC	LAURIE	Hearing Scheduled (Change of Plea 02/08/2016 09:00 AM)
		LAURIE	Notice Of Hearing
2/8/2016	CONT	JANET	Hearing result for Change of Plea scheduled on 02/08/2016 09:00 AM: Continued
2/9/2016	HRSC	JANET	Hearing Scheduled (Change of Plea 02/22/2016 09:00 AM)
		JANET	Notice Of Hearing
2/22/2016	CMIN	JANET	Court Minutes Hearing type: Change of Plea Hearing date: 2/22/2016 Time: 9:17 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Michael Tribe
	CONT	JANET	Hearing result for Change of Plea scheduled on 02/22/2016 09:00 AM: Continued

State of Idaho vs. Dustin Jade Morgan

Date	Code	User	Judge
2/22/2016	HRSC	JANET	Hearing Scheduled (Change of Plea 02/29/2016 09:00 AM)
		JANET	Notice Of Hearing
2/29/2016	CMIN	JANET	Court Minutes Hearing type: Change of Plea Hearing date: 2/29/2016 Time: 11:26 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson
	CPGT	JANET	Hearing result for Change of Plea scheduled on 02/29/2016 09:00 AM: Change Plea To Guilty Before H/t
	HRSC	JANET	Hearing Scheduled (Sentencing 04/11/2016 09:00 AM)
		JANET	Notice Of Hearing
	PSIO1	JANET	Pre-Sentence Investigation Evaluation Ordered
	PLEA	JANET	A Plea is entered for charge: - GT (I49-1404(2) Officer-Flee or Attempt to Elude a Police Officer)
3/16/2016	AGRE	JANET	Plea Agreement pursuant to Idaho Criminal Rule 11 (has attorneys signatures)
	AGRE	JANET	Plea Agreement pursuant to Idaho Criminal Rule 11 (has defendant's signature)
4/8/2016	MISC	JANET	letter from IDOC - Defendant did not show for PSI interview
4/11/2016	CMIN	JANET	Court Minutes Hearing type: Sentencing Hearing date: 4/11/2016 Time: 11:22 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Michael Tribe
	WARB	JANET	Warrant issued - Bench Bond amount: .00 failure to appear no bond Defendant: Morgan, Dustin Jade
	MISC	JANET	Minidoka County Sheriff's Office Receipt
	FTAH	LAURIE	Hearing result for Sentencing scheduled on 04/11/2016 09:00 AM: Failure To Appear For Hearing Or Trial
4/15/2016	WART	LAURIE	Warrant Returned failure to appear no bond Defendant: Morgan, Dustin Jade

State of Idaho vs. Dustin Jade Morgan

Date	Code	User		Judge
4/15/2016	CMIN	LAURIE	Court Minutes-Magistrate	Mick D. Hodges
	ORDR	LAURIE	Order	Mick D. Hodges
	HRSC	LAURIE	Hearing Scheduled (Sentencing 04/25/2016 09:00 AM)	Jonathan Brody
		LAURIE	Notice Of Hearing	Jonathan Brody
	ORDR	LAURIE	Order-no bail pending sentencing	Jonathan Brody
4/25/2016	CMIN	LAURIE	Court Minutes Hearing type: Sentencing Hearing date: 4/25/2016 Time: 9:07 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Laurie McCall Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson	Jonathan Brody
	INHD	LAURIE	Hearing result for Sentencing scheduled on 04/25/2016 09:00 AM: Interim Hearing Held	Jonathan Brody
	HRSC	LAURIE	Hearing Scheduled (Sentencing 06/06/2016 09:00 AM) may move to earlier date if PSI received	Jonathan Brody
5/25/2016		LAURIE	Notice Of Hearing	Jonathan Brody
	HRSC	JANET	Amended Hearing Scheduled (Sentencing 06/01/2016 09:00 AM)	Jonathan Brody
		JANET	Amended Notice Of Hearing	Jonathan Brody
6/1/2016	CMIN	JANET	Court Minutes Hearing type: Sentencing Hearing date: 6/1/2016 Time: 9:08 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Lance Stevenson	Jonathan Brody
	INHD	JANET	Hearing result for Sentencing scheduled on 06/01/2016 09:00 AM: Interim Hearing Held	Jonathan Brody
	HRSC	JANET	Hearing Scheduled (Sentencing 06/06/2016 09:00 AM)	Jonathan Brody
		JANET	Notice Of Hearing	Jonathan Brody
	LODG	JANET	Lodged - Presentence report dated 6-1-16	Jonathan Brody
			Document sealed	

State of Idaho vs. Dustin Jade Morgan

Date	Code	User		Judge
6/6/2016	CMIN	JANET	Court Minutes Hearing type: Sentencing Hearing date: 6/6/2016 Time: 9:36 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen Prosecutor: Michael Tribe	Jonathan Brody
	DPHR	JANET	Hearing result for Sentencing scheduled on 06/06/2016 09:00 AM: Disposition With Hearing	Jonathan Brody
	ORDR	JANET	Judgment of conviction and Order suspending sentence	Jonathan Brody
	SNIC	JANET	Sentenced To Incarceration (I49-1404(2) Officer-Flee or Attempt to Elude a Police Officer) Confinement terms: Credited time: 145 days. Penitentiary determinate: 3 years. Penitentiary indeterminate: 2 years.	Jonathan Brody
	SNIC	JANET	Sentenced To Incarceration Penitentiary suspended.	Jonathan Brody
	PROB	JANET	Probation Ordered (I49-1404(2) Officer-Flee or Attempt to Elude a Police Officer) Probation term: 5 years. (Supervised)	Jonathan Brody
6/7/2016	MOTN	JANET	Motion to dismiss (count II)	Jonathan Brody
6/8/2016	ORDR	LAURIE	Order to Dismiss-Count II	Jonathan Brody
6/14/2016	NOTC	LAURIE	Notice of Appeal	Jonathan Brody
	MOTN	LAURIE	Motion for appointment of State Appellate Public Defender	Jonathan Brody
	APDC	LAURIE	Appeal Filed In District Court	Jonathan Brody
	APDC	LAURIE	Appeal Filed In District Court	Jonathan Brody
6/15/2016	ORDR	LAURIE	Order appointing State Appellate Public Defender	Jonathan Brody
7/12/2016	NOTC	LAURIE	Amended Notice of Appeal	Jonathan Brody

MINIDOKA COUNTY, IDAHO
FILED
FEB 24 2010

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
MICHAEL P. TRIBE, *Deputy Prosecuting Attorney (ISB#2778)*
ROBERT S. HEMSLEY, *Deputy Prosecuting Attorney (ISB#7955)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

ATTORNEYS FOR STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA
MAGISTRATE COURT**

STATE OF IDAHO,	)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>CRIMINAL COMPLAINT</u>
)	
DUSTIN MORGAN,)	
)	
Defendant.)	

Personally appeared before me this 23rd day of February, 2010,
Dave Pinther, of the Minidoka County Sheriff's Department, in the County of
Minidoka, State of Idaho, who, being first duly sworn, complains of Dustin Morgan,
and charges him with the public offense of:

COUNT I
FELONY ELUDING
Felony
Idaho Code Section 49-1404(2)(a)


That the said defendant, Dustin Morgan, on or about the 21st day of December, 2009, in the County of Minidoka, State of Idaho, committed the public offense of FELONY ELUDING, in violation of Idaho Code Section 49-1404(2)(a), by willfully, intentionally, unlawfully, and feloniously operating a motor vehicle, to-wit: a gray 1994 Acura Integra, bearing Idaho license plate 2P22424, at our about Interstate 84 milepost 204 to Interstate 84 milepost 208, Minidoka County, Idaho, and willfully eluding a pursuing police vehicle after being given a visual signal and/or audible signal to stop, and in so doing traveled in excess of thirty (30) miles per hour above the posted speed limit, to-wit: one hundred and twenty (120) miles per hour.

COUNT II
DRIVING WITHOUT PRIVILEGES
(MORE THAN TWO (2) WITHIN FIVE (5) YEARS)
Misdemeanor
Idaho Code Section 18-8001(5)

That the said defendant, Dustin Morgan, on or about the 21st day of December, 2009, in the County of Minidoka, State of Idaho, committed the public offense of DRIVING WITHOUT PRIVILEGES, in violation of Idaho Code Section 18-8001(5), by willfully, intentionally, and unlawfully was in actual physical control of a gray 1994 Acura Integra, bearing Idaho license plate 2P22424, upon a highway, to-wit: Interstate 84 milepost 204 to Interstate 84 milepost 208, Minidoka County, Idaho knowing his operator's license or permit was suspended in Idaho, and while having pled guilty to or having been found guilty of at least two violations of Idaho Code Section 18-98001 within the previous five years.

All of which is contrary to the form of the statute in said state made and provided and against the peace and dignity of the State of Idaho.

WHEREFORE, your affiant prays for a Warrant for the arrest of Dustin Morgan and that he may be dealt with according to law.


Dave Pinther

Subscribed and sworn to before me this 23 day of February, 2010.


Magistrate Judge

DEMAND FOR NOTICE OF ALIBI DEFENSE

Pursuant to Section 19-519, Idaho Code, the Prosecuting Attorney of Minidoka County, State of Idaho, or his Deputy, does hereby make written demand upon the defendant named in the above and foregoing Complaint and that the defendant shall serve within ten (10) days or at such different times as the Court may direct, upon the Prosecuting Attorney of Minidoka County, State of Idaho, P. O. Box 368, Rupert, Idaho, 83350, a written notice of his/her intention to offer a defense of alibi. Such notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and names and addresses of the witnesses upon whom he/she intends to rely to establish such alibi.

By 
Prosecuting Attorney's Office

(b) (7) (D)

5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION
SANDHOGA COUNTY, IDAHO

FILED

FEB 24 2010

**JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION**

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2. On December 21, 2009, your affiant was working in Minidoka County, State of Idaho, and was traveling westbound on Interstate 84 near milepost 204, when a gray Acura Integra, 2P22424, passed me in the left lane. As the vehicle passed me I noticed that the muffler was extremely loud. The vehicle passed another car and then changed to the right lane.

3. Your affiant then changed into the left lane and pulled up beside the vehicle. I rolled down my passenger window to see how loud the muffler was and could hear the sounds of the muffler over the sound of the wind coming into my vehicle. I changed lanes behind the vehicle and activated my overhead lights. The vehicle signaled and changed into the left lane. The vehicle began to accelerate reaching a speed of 120 miles per hour in a posted 75 miles per hour zone. The vehicle was weaving in and out of traffic and cutting other vehicles off.

4. I continued after the vehicle and gave the ISP Regional Communication Center (RCC) its plate number. After the registration came back clear I advised I would be discontinuing the pursuit for public safety.

5. Your affiant then turned off my lights and began to allow distance to develop between myself and the violator. At milepost 208 the vehicle quickly exited from the left lane cutting a vehicle off in the right lane. The Acura could not hold the roadway and left the roadway in a broad slide nearly hitting a tree. The vehicle came back on the roadway and started south on Overland. I watched the vehicle as it drove through a red light then made a left turn at 40 South Road and then a quick right turn into the Wal-Mart parking lot. I followed the vehicle there without lights activated.

6. I pulled into the parking lot at 385 North Overland, Minidoka County, Idaho, and located the vehicle. As I came to a stop I exited my vehicle and saw three subjects walking quickly from the vehicle. Starting at left was a person in blue jeans, white t-shirt carrying a blue back pack. The center was a tall male, approximately six feet tall in a white hooded sweatshirt. On the right was a short individual in dark

colored clothes. I ordered the subjects to stop. They looked back at me then fled on foot. I pursued the person carrying the blue backpack. They ran for the north doors of Wal-Mart. Just inside the door the individual dropped the blue backpack. I caught her and took her to the ground. She was handcuffed and arrested for resisting and obstructing. I escorted her to my patrol vehicle and searched her person incident to arrest. I identified her as Shelby Ledawn Burwell with her Idaho Identification Card. Burwell was seated in the backseat of my patrol car.

7. I searched the backpack Burwell was carrying and located a black leather wallet with Burwell's identification in it. A glass pipe with white residue was under her wallet. I tested the residue and it was presumptively field tested positive for methamphetamine. Also in the bag was a second glass pipe with white residue, a black lock box with small plastic bags and a syringe. Other items located in the backpack were an asthma inhaler, emery board, Pet Smart tag, letters, CD case with writing, knives, brass knuckles, police scanner, Motel 6 hotel receipt with Burwell's name, a Nikon Cool Pix camera, a Motorola black cell phone, and black electrical tape.

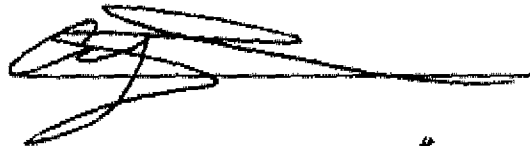
8. Also in the parking lot a suspicious package from the location Bruwell ran from was found. I retrieved the package finding 59.2 grams of substance which tested presumptively field tested positive for methamphetamine. The package was wrapped in black electrical tape. The end of the black electrical tape found in the backpack matched up to the end of tape found on the package containing the 59.2 grams of methamphetamine.

9. Burwell admitted to smoking methamphetamine two hours prior to the stop. She also stated that the driver of the grey Acura was Dustin Morgan.

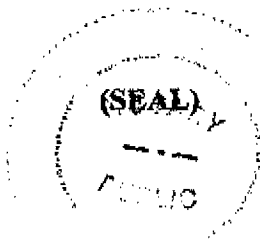
10. On December 22, 2009, Mini-Cassia Drug Task Force Detective Kevin Horak met with Burwell at the Mini-Cassia Criminal Justice Center, Burley, Idaho. Burwell identified the other occupant of the vehicle as a Jessica Jensen. She also


confirmed that they had driven to Twin Falls, Idaho, and checked into a motel where they had been smoking methamphetamine.

11. On December 22, 2009, your affiant met with the Wal-Mart loss prevention manager, Wyndie Redmon, and we reviewed the parking lot video for the north end of Wal-Mart, camera #11. The video reflects a female exit the passenger side of the grey Acura vehicle with a backpack (identified as Shelby Burwell), a second smaller passenger exit the vehicle from the passenger side from the back seat of the two door vehicle, and a tall slender male in a dark colored jacket exited the driver's side. The video shows the three subjects immediately scurry from the vehicle and then begin running.



Subscribed and sworn to before me this 11th day of January, 2010.




Notary Public for Idaho
Residing at Rupert, Idaho
My commission expires: 10-5-2012

Fifth Judicial District Court, State of Idaho
In and For the County of Minidoka
715 G Street
Rupert, Idaho 83350

MINIDOKA COUNTY, IDAHO
FILED

SEP 15 2010

5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

STATE OF IDAHO
Plaintiff,
vs.

Dustin Jade Morgan
106 4th Ave East
Polson, MT 59860

Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED]

Case No: CR-2010-0000550

ORDER APPOINTING
PUBLIC DEFENDER

The Court being fully advised as to the application of Dustin Jade Morgan, and it appearing to be a proper case,

NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

Mini-Cassia Public Defender's Office
P.O. Box 188
111 West 15th Street
Burley, Idaho 83318
(208) 878-6801

Public Defender for the County of Minidoka, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Dustin Jade Morgan, in all proceedings in the above-entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of Court appointed counsel. Minimum Amount of \$ 257.00

Date:

Sept. 15, 2010

Judge

Rick L. Bollar

Copies to:

✓ Public Defender

✓ Prosecutor

emailed

[Signature]
Deputy Clerk

MINIDOKA COUNTY, IDAHO

FILED

OCT 04 2010

5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

Dennis R. Byington, Esq., ISB No. 2839
MINI-CASSIA PUBLIC DEFENDER OFFICE
111 West 15th Street
P.O. Box 188
Burley, ID 83318
Phone (208) 878-6801

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN MORGAN,

Defendant.

Case No. CR 2010-550

MOTION TO PERMIT ATTORNEY
TO WITHDRAW

COMES NOW Dennis R. Byington, Court appointed counsel for the Defendant, Dustin Morgan, and, pursuant to Rule 44.1 I.C.R., moves to withdraw from the above-entitled case.

This Motion is made upon the grounds and for the reason that this Office has been appointed to represent Shelby Burwell, a co-defendant, and a potential witness in this case, in Minidoka County Case No. CR 2009-4842*D, and there appears to be a conflict of interest in representing Dustin Morgan, in the above referenced case.

Since my representation in this matter is through an appointment by the Court, I also request new counsel be appointed to represent Dustin Morgan.

DATED this 4 day of October, 2010.

MINI-CASSIA PUBLIC DEFENDER OFFICE

By

Dennis R. Byington
Attorney for Defendant

MOTION TO PERMIT ATTORNEY TO WITHDRAW - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of October, 2010, I served a true and correct copy of the foregoing document upon the attorney named below in the manner noted:

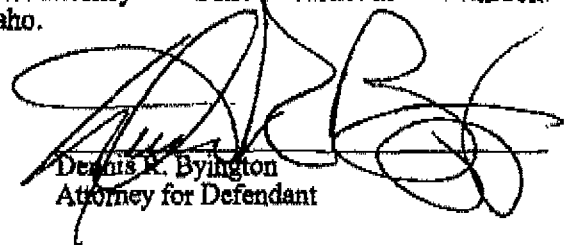
Lance Stevenson
Prosecuting Attorney
P. O. Box 368
Rupert, ID 83350

_____ By depositing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.

_____ By hand delivering copies of the same to the office of the attorney at the address above indicated.

☒ _____ By telecopying copies of the same to said attorney at his/her telecopy number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.

_____ By delivering a copy thereof to said attorney's mail file or basket at the Minidoka County Courthouse in Rupert, Idaho.


Dennis R. Byington
Attorney for Defendant

Dennis R. Byington, Esq., ISB No. 2539
MINI-CASSIA PUBLIC DEFENDER OFFICE
111 West 15th Street
P.O. Box 188
Burley, ID 83318
(208) 878-6801

OCT 05 2010

5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN MORGAN,

Defendant.

Case No. CR 2010-550

ORDER PERMITTING ATTORNEY
TO WITHDRAW

This matter having come before the Court on the Motion to Permit Attorney to Withdraw,
and good cause appearing, therefor;

IT IS HEREBY ORDERED that Dennis R. Byington, be permitted to withdraw as attorney
in the above-entitled cases, and

IT IS FURTHER ORDERED that Clayne Zollinger be appointed as new
counsel to represent Dustin Morgan.

DATED this 5 day of October, 2010.



RICK L. BOLLAR, Magistrate

ORDER PERMITTING ATTORNEY TO WITHDRAW - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of October, 2010, I served a true and correct copy of the foregoing document upon the attorney named below in the manner noted:

Lance Stevenson
Prosecuting Attorney
P. O. Box 368
Rupert, ID 83350

Dennis R. Byington
Public Defender
P. O. Box 188
Burley, ID 83318

Dustin Morgan #3005000
c/o Cascade County Regional Prison
3800 Ulm North Frontage Rd.
Great Falls, MT 59404

- X By depositing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.
- _____ By hand delivering copies of the same to the office of the attorney at the address above indicated.
- _____ By telecopying copies of the same to said attorney at his/her telecopy number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the Burley Post Office in Burley, Idaho.
- X By delivering a copy thereof to said attorney's mail file or basket at the Minidoka County Courthouse in Rupert, Idaho.

DUANE SMITH
Clerk of the Court


Deputy Clerk

ORDER PERMITTING ATTORNEY TO WITHDRAW - 2

MINIDOKA COUNTY, IDAHO
FILED
MAY 21 2015
MINIDOKA COUNTY, IDAHO

DEPUTY CLERK: R. MANCIAS

DOB
Defendant

1231/ 1232	Right by Video		Private Attorney		Guilty
	Penalties		Waived Counsel		Not Guilty
	F.T.A.	1235	P.D. Appointed		Sentenced
	Bench Warrant		Pre-trial	1235	Preliminary

[illegible]

**IN THE DISTRICT COURT, FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, MINIDOKA COUNTY**

MINIDOKA COUNTY, IDAHO
FILED
MAY 21 2015
JUDICIAL DISTRICT COURT
CLERK OF DISTRICT COURT

State of Idaho,

Case No. CR-2010-550

-VS-

Arraignment / 1st Appear. Minutes / Oral

Dustin Jade Morgan,
Defendant.

() Interpreter Required _____

Today's Date: 5/21/15

Defendant's Mailing Address: 11328 Whiskey Ck Dr

In custody appearance: () Yes () No.
Prob. cause affidavit on file: () Yes () No

() Defendant Failed to Appear
() Refer to Pros. for I.C.19-3901A charge

Defendant advised of rights:

() in person

() in writing

(X) by videotape

+ Right to remain silent and not incriminate self
+ Right to jury trial
+ Right to confront and cross-examine evidence and witnesses
+ Right to be represented by counsel

+ Right to speedy trial
+ Right to present evidence on own behalf
+ State must prove guilt beyond a reasonable doubt
+ Right to appeal

	Charge(s)	I.C. Section	Maximum Penalty
I.	Elude an Officer	49-1404(2)(1)	
II.	DWP 3 rd Offense	18-8001(5)	
III.			
IV.			
V.			
VI.			

Counsel: ☐ Pub Def ☒ Conflict P.D. ☐ P.D. denied ☐ Waives counsel ☐ Retain counsel: _____

Plea Entered [Misdemeanor]: ☒ Not Guilty ☐ Guilty ☐ Plea Entry Cont'd: _____, 20__

Next Court Date: 6/3/15, 20__ Time: 1:30 p.m.

() Pretrial Conference (X) Preliminary Hrg. () Sentencing () Other: _____

Bail: ☒ Cash, surety or real property \$ 10,000 () O.R. () Additional conditions below:

- ☐ Do not consume alcohol or illegal drugs or possess any controlled substance without a valid prescription.
- ☐ Do not frequent any establishment where primary source of income is sale of alcohol.
- ☐ Submit to random testing for alcohol or drugs _____ times/weekly at _____, per law enforcement.
- ☐ Report to Misdemeanor Probation within _____ hours for monitoring of all conditions of pretrial release.
- ☐ Do not operate a motor vehicle without a valid license and liability insurance.
- ☐ Do not operate a motor vehicle without a functioning interlock device.
- ☐ Do not operate a motor vehicle with any amount of alcohol or illegal drugs in your system.
- ☐ Comply with the requirements of any GPS/electronic monitoring.
- ☐ No new felony or misdemeanor charges.
- ☐ Appear for all future court proceedings.
- ☐ Do not appear for court with any amount of alcohol or illegal drugs in your system.
- ☐ Stay in contact with your attorney.
- ☐ You waive extradition to return to Idaho for all court proceedings if you leave the State of Idaho.
- ☐ Other: _____

These conditions are in addition to any other conditions imposed by the court. Violation of these conditions will result in the revocation of your release and a warrant for your arrest.

() No Contact Order Issued - see additional Order

IT IS SO ORDERED: May 21, 2015

JUDGE: [Signature]

I agree to these conditions of release and understand that my release can be revoked if I violate them and I would be rearrested with **BAIL SET AT \$** _____ **Defendant:** _____

Court Minutes

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY, MAGISTRATE DIVISION

State of Idaho,

Plaintiff,

vs.

Dustin Jade Morgan
DefendantCase No. CR- 2010 - 550

ORDER

The Court enters the following Order(s) in this matter:

() The Public Defender is appointed to represent the Defendant. The Defendant is required to meet with the Public Defender today in designated area immediately following arraignment. If the Defendant is in custody, the Defendant is required to meet with the Public Defender no later than 24 hours following release from custody. Reimbursement by defendant will be required for public defender services in an amount of not less than \$_____.

(X) C. Zolynn Conflict Public Defender is appointed to represent the Defendant. The Defendant is required to contact the Conflict Public Defender within 24 hours and set up an appointment to meet with the Conflict Public Defender before the next scheduled hearing. Reimbursement by defendant will be required for public defender services in an amount of not less than \$_____.

(X) The defendant is ordered to personally appear for the following Court proceedings in the Sherman J. Bellwood Judicial Building, Rupert, Idaho on the date and at the time stated below:

(X) Preliminary Hearing

() Pre-trial Conference

() Probation Violation Hearing

() Sentencing - ESTIMATED FINES AND COSTS PAYABLE AT TIME
OF SENTENCING: \$_____

() _____

Date: June 3, 2015Time: 1:30 at p.m. Courtroom: 2Ordered this date: May 21, 2015[Signature]
Judge

NOTICE: FAILURE TO COMPLY WITH THE ABOVE Order will result in the issuance of a warrant for your arrest.

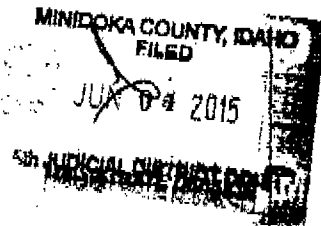
DEFENDANT CERTIFIES RECEIPT THIS DATE OF THE ABOVE ORDER.

Date: _____

Defendant's Signature: _____

Order

1 Kent D. Jensen (ISB #4424)
2 JENSEN LAW OFFICE
3 101 W 18th St.
4 P.O. Box 276
5 Burley, Idaho 83318
6 Telephone: (208) 878-3366
7 Fax: (208) 515-3464
8 Attorney for Defendant



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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,


Defendant.

Case No. CR 2010-550

**MOTION TO CONTINUE
PRELIMINARY HEARING**

COMES NOW the Defendant, through his attorney of record Kent D. Jensen, and moves this Court for an Order continuing the Preliminary Hearing in this matter, which is currently set for Wednesday, June 3rd, 2015 at 1:30 p.m. The Counsel for the Defendant has been recently retained and more time is needed to review the case. Additionally, the Prosecuting Attorney for the case, having been contacted, has no objections to this Motion.

DATED this 2nd day of June, 2015.


Kent D. Jensen
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2015, I served the foregoing Motion to Continue Hearing upon the attorney for Idaho by e-mail, addressed as follows:

Minidoka County Prosecutor

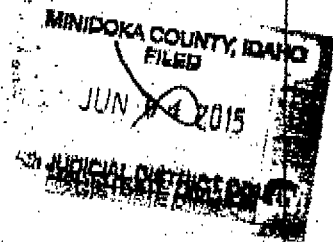
kbourn@co.minidoka.id.us


Kent D. Jensen

MOTION TO CONTINUE PRELIMINARY HEARING -1-

Kent D. Jensen (ISB #4424)
JENSEN LAW OFFICE
101 W 18th St.
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 878-3366
Fax: (208) 515-3464

Attorney for Defendant



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

Case No. CR 2010-550

WAIVER OF TIME FOR PRELIMINARY
HEARING

COMES NOW the Defendant, who after consulting with counsel informs this court that he has waived the statutory time for holding the preliminary hearing in this case. Therefore, after understanding that I have a right to have my preliminary hearing held within 14 days, if I am incarcerated, or within 21 days if I am not, I hereby waive the statutory right to have my preliminary hearing held within the time allowed by law.

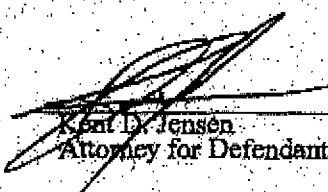
DATED this 2 day of June, 2015.


Dustin Jade Morgan

I, counsel for the Defendant, do hereby acknowledge that I have discussed with the defendant his right to have a preliminary hearing within the statutory time allowed by law, and that the Defendant does hereby, pursuant to advice of counsel, waive his rights to have his

1 preliminary hearing held within the time allowed. The Defendant does hereby request that the
2 court set the preliminary hearing in this matter, as soon as the Court's calendar will permit.

3 Dated this 2nd day of June, 2015.

4
5 
6 Kent D. Jensen
7 Attorney for Defendant

8 CERTIFICATE OF SERVICE

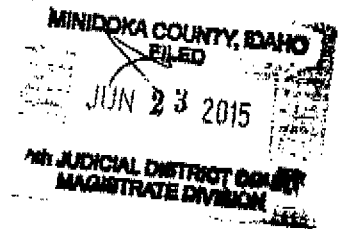
9 I hereby certify that on this 2nd day of June, 2015, I served the foregoing Waiver of
10

11 Time for Preliminary Hearing upon the attorney for the State of Idaho via facsimile addressed
12 as follows:

13 Lance Stevenson
14 Minidoka County Prosecutor
15 P.O. Box 368
16 Rupert, Idaho 83350

17 
18 Kent D. Jensen
19
20
21
22
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25
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MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO
LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ROBERT S. HEMSLEY, *Chief Deputy Prosecuting Attorney (ISB#7955)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177



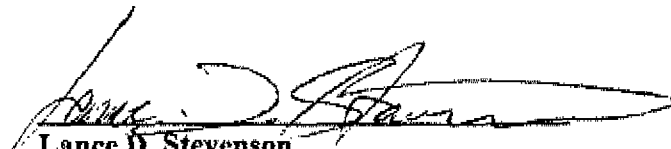
ATTORNEYS FOR STATE OF IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,)	Case No. CR-2010-550*D
)	
Plaintiff,)	
)	
vs.	)	<u>MOTION FOR TRANSPORT</u>
)	
DUSTIN MORGAN,)	
)	
Defendant.)	

COMES NOW, the Plaintiff in the above-entitled matter, the State of Idaho, by and through Lance D. Stevenson, Prosecuting Attorney for the County of Minidoka, and moves the court for an Order transporting Shelby Burwell #60652, from the Bonneville County Jail, 605 N. Capital, Idaho Falls, Idaho, to the Mini-Cassia Criminal Justice Center, 1415 Albion Ave., Burley, Idaho on the 29th day of June, 2015.

DATED the 19th day of June, 2015.


Lance D. Stevenson
Prosecuting Attorney

MOTION AND ORDER FOR TRANSPORT

Kent D. Jensen (ISB #4424)
JENSEN LAW OFFICE
101 W 18th St.
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 878-3366
Fax: (208) 515-3464
Attorney for Defendant

MINIDOKA COUNTY, IDAHO
FILED

RECEIVED DISTRICT CLERK
JUN 24 2015

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Case No. CR 2010-550

Plaintiff,

vs.


**MOTION TO CONTINUE
PRELIMINARY HEARING**

DUSTIN JADE MORGAN,

Defendant.

COMES NOW the Defendant, through his attorney of record Kent D. Jensen, and moves this Court for an Order continuing the Preliminary Hearing in this matter, which is currently set for Wednesday, July 1st, 2015 at 1:30 p.m. The Counsel for the Defendant will be out of town June 22 through July 1, 2015 and will be unable to attend. Additionally, the Prosecuting Attorney for the case, having been contacted, has no objections to this Motion.

DATED this 15 day of June, 2015.


Kent D. Jensen
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of June, 2015, I served the foregoing Motion to Continue Hearing upon the attorney for Idaho by e-mail, addressed as follows:

Minidoka County Prosecutor

kbourn@co.minidoka.id.us


Kent D. Jensen

MOTION TO CONTINUE PRELIMINARY HEARING -1-

Kent D. Jensen #4424

101 W 18th St.
P.O. Box 278
Burley, Idaho 83318
Telephone: (208) 878-3386
Facsimile: (208) 515-3464
kentj7@gmail.com

Attorney for Defendant

MINIDOKA COUNTY, IDAHO
FILED
JUN 24 2015
CLERK OF DISTRICT COURT
MINIDOKA, IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA**

| STATE OF IDAHO,
| Plaintiff,
| vs.
| DUSTIN JADE MORGAN,
| Defendant.

| Case No. CR 2010 550
|
| ORDER TO CONTINUE HEARING
|

Being advised in the law and in the premises and for good cause shown, the Court issues the following Order:

IT IS HEREBY ORDERED that based upon the Motion to Continue, the Preliminary hearing presently set for July 1, 2015, at 1:30 p.m. is hereby continued until the 23 day of July, 2015, at 10:00 o'clock A.m.

DATED this 30 day of June, 2015.


Honorable Judge Rick L. Bollar

CLERK'S CERTIFICATE OF MAILING

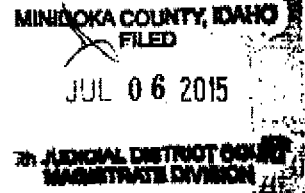
I hereby certify the on this 30th day of June, 2015, I served the foregoing **Order to Continue** upon the interested attorneys by facsimile to the following addresses:

Minidoka County Prosecutor
208-436-3177

Kent D. Jensen
208-515-3464


Clerk

MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO
LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ROBERT S. HEMSLEY, *Chief Deputy Prosecuting Attorney (ISB#7955)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177



ATTORNEYS FOR STATE OF IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,	)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>MOTION FOR TRANSPORT</u>
)	
DUSTIN MORGAN,)	
)	
Defendant.)	

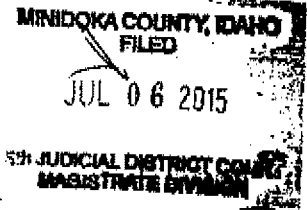
COMES NOW, the Plaintiff in the above-entitled matter, the State of Idaho, by and through Lance D. Stevenson, Prosecuting Attorney for the County of Minidoka, and moves the court for an Order transporting Shelby Burwell #60652, from the Bonneville County Jail, 605 N. Capital, Idaho Falls, Idaho, to the Mini-Cassia Criminal Justice Center, 1415 Albion Ave., Burley, Idaho on the 21st day of July, 2015.

DATED the 2 day of July, 2015.


Lance D. Stevenson
Prosecuting Attorney

MOTION AND ORDER FOR TRANSPORT

MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO
LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
ROBERT S. HEMSLEY, *Deputy Prosecuting Attorney (ISB#7955)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177



ATTORNEYS FOR STATE OF IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,	)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>ORDER FOR TRANSPORT</u>
)	
DUSTIN MORGAN,)	
)	
Defendant.)	

IT IS HEREBY ORDERED that Shelby Burwell #60652 be transported from the Bonneville County Jail, 605 N. Capital, Idaho Falls, Idaho, to the Mini-Cassia Criminal Justice Center, 1415 Albion Ave., Burley, Idaho, by the Sheriff of Minidoka County, or other designated law enforcement officer thereof, on the 21st day of July, 2015.

DATED this 6 day of ^{July} ~~June~~, 2015.



Magistrate Judge

MOTION AND ORDER FOR TRANSPORT

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 6th day of July, 2015. I mailed a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Jarod Cash
Idaho Department of Corrections
Central Office
1299 N. Orchard Suite 110
P. O. Box 83720
Boise, ID 83720
jcash@idoc.idaho.gov

Minidoka County Prosecuting Attorney
P. O. Box 368
Burley, ID 83350

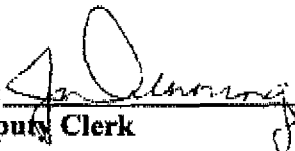
_____ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

_____ By Hand delivering copies of the same to the office of the attorneys(s) at his office at the address stated above.

X By placing copies of the same in the Public Defender's basket located in the Clerk's Office in the Judicial Annex, Minidoka County Courthouse. *Executed*


_____ By telecopying copies of the same to said attorneys(s) at the telecopied number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

Patty Temple, Clerk

By: 
Deputy Clerk

MOTION AND ORDER FOR TRANSPORTS

1 Kent D. Jensen 4424
101 W 18th St.
2 P.O. Box 276
Burley, Idaho 83318
3 Telephone: (208) 878-3366
Fax: (208) 878-3368
4 Attorney for Defendant

MINIDOKA COUNTY, IDAHO
FILED 

JUL 23 2015

5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

5
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 STATE OF IDAHO,

Case Number CR 2010-550

9 Plaintiff,

10 vs.

WAIVER OF
PRELIMINARY HEARING

11 DUSTIN JADE MORGAN,

12 Defendant

13 TO: THE CLERK OF THE MAGISTRATE COURT IN AND FOR THE COUNTY OF
14 MINIDOKA AND THE MINIDKA COUNTY PROSECUTING ATTORNEY.

15 YOU ARE HEREBY NOTIFIED that the Defendant, Dustin Jade Morgan, by and
16 through her attorney of record, Kent D. Jensen, waives ^{her} preliminary hearing in the above-
17 entitled cause of action.

18 Dated this 22nd day of July, 2015.

19 
20 Kent D. Jensen
Attorney for Defendant

21 I, Dustin Jade Morgan, state that I am Defendant in the above-entitled matter and that I
22 have read the above and foregoing Waiver of Preliminary Hearing and know the contents
23 thereof. I further acknowledge that I understand that I have the right to a preliminary hearing,
24 wherein the State would have to submit evidence of my participation in this crime, and that by
25 waiving my preliminary hearing I am relieving the State of Idaho of this burden. I further

1 acknowledge that I am doing this after having consulted with my attorney, wherein my attorney
2 has explained to me all of the rights that I will be waiving in this matter, and that I am executing
3 this waiver in a knowing, voluntary, and intelligent manner.

4 Dated this 22 day of July, 2015.

5 
6 Dustin Jade Morgan

7 CERTIFICATE OF MAILING

8 I hereby certify that on this 22 day of July, 2015, I served the foregoing Waiver of
9 Preliminary Hearing upon the attorney for Plaintiff via facsimile, addressed as follows:

10 Minidoka County Prosecutor
11 208-436-3177

12 
13 Kent D. Jensen

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

MINIDOKA COUNTY, IDAHO
FILED
JUL 23 2015
5th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

STATE OF IDAHO,	)	Case No. CR-2010-550
Plaintiff,)	
)	
vs.	)	ORDER
)	
DUSTIN JADE MORGAN,)	
Defendant.)	
)	
)	
)	

Based upon the Defendant's Waiver of Preliminary Hearing, the Court finds the defendant does admit there is probable cause to believe the offense has been committed by the defendant.

THEREFORE, the defendant is bound over to District Court there to answer the charges of ELUDING AN OFFICER (DWP):

NOW, THEREFORE, IT IS HEREBY ORDERED that the defendant, DUSTIN JADE MORGAN be bound over to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, to answer said charges.

DATED: July 23, 2015


Magistrate Judge

FILED-DISTRICT COURT

CASE #

TIME

JUL 24 2015

PATTY TEMPLE, CLERK

DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB #7733)*

ROBERT S. HEMSLEY, *Chief Deputy Prosecuting Attorney (ISB #7955)*

ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB #2778)*

715 G. Street, P. O. Box 368

Rupert, ID 83350

Office: (208)436-7187

Facsimile: (208) 436-3177

ATTORNEYS FOR THE STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,
LAST KNOWN ADDRESS:
MINI-CASSIA JAIL, BURLEY, ID
SSN/DL [REDACTED]
DOB: [REDACTED]

Defendant.

) Case No. CR-2010-550

)

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INFORMATION

Lance D. Stevenson, Prosecuting Attorney in and for Minidoka County, State of Idaho, who, in the name and by the authority of said State prosecutes in its behalf, in proper person comes into said District Court in the County of Minidoka, State of Idaho, and gives the Court to understand and be informed that Dustin Jade Morgan is accused by this Information of the crimes of:

COUNT I
FELONY ELUDING
Felony
Idaho Code Section 49-1404(2)(a)


That the said defendant, Dustin Morgan, on or about the 21st day of December, 2009, in the County of Minidoka, State of Idaho, committed the public offense of FELONY ELUDING, in violation of Idaho Code Section 49-1404(2)(a), by willfully, intentionally, unlawfully, and feloniously operating a motor vehicle, to-wit: a gray 1994 Acura Integra, bearing Idaho license plate 2P22424, at our about Interstate 84 milepost 204 to Interstate 84 milepost 208, Minidoka County, Idaho, and willfully eluding a pursuing police vehicle after being given a visual signal and/or audible signal to stop, and in so doing traveled in excess of thirty (30) miles per hour above the posted speed limit, to-wit: one hundred and twenty (120) miles per hour.

COUNT II
DRIVING WITHOUT PRIVILEGES
(MORE THAN TWO (2) WITHIN FIVE (5) YEARS)
Misdemeanor
Idaho Code Section 18-8001(5)

That the said defendant, Dustin Morgan, on or about the 21st day of December, 2009, in the County of Minidoka, State of Idaho, committed the public offense of DRIVING WITHOUT PRIVILEGES, in violation of Idaho Code Section 18-8001(5), by willfully, intentionally, and unlawfully was in actual physical control of a gray 1994 Acura Integra, bearing Idaho license plate 2P22424, upon a highway, to-wit: Interstate 84 milepost 204 to Interstate 84 milepost 208, Minidoka County, Idaho knowing his operator's license or permit was suspended in Idaho, and while having pled guilty to or having been found guilty of at least two violations of Idaho Code Section 18-98001 within the previous five years.

All of which is contrary to the form, force and effect of the statute in such case in said State made and provided and against the peace and dignity of the State of Idaho.

DATED this 23rd **day of July, 2015.**


Lance D. Stevenson
Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of July, 2015, I delivered a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Kent D. Jensen
P. O. Box 276
Burley, ID 83318

- ☐ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.
- ☐ By Hand delivering copies of the same to the office of the attorneys(s) at his office at the address stated above.
- ☒ By placing copies of the same in the attorney's basket located in the Clerk's Office in the Judicial Annex, Minidoka County Courthouse.
- ☐ By telecopying copies of the same to said attorneys(s) at the telecopied number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.



Kim Bourn

COURT MINUTES

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Arraignment

Hearing date: 8/3/2015

Time: 9:21 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is present in custody

Court calls case, comments re: arraignments and takes roll of those set for arraignment - Present are Chad Clarke, Steven Lopez, Dustin Morgan, Cocaine Perry, William Adams is NOT PRESENT

Court questions defendant re: information - Defendant has copy, identifying information is accurate

Court informs of Count I Eluding, felony, informs of max penalty and other felony consequences - Defendant understands

Court informs of Count II Driving without privileges, more than two, informs of max penalty - Defendant understands

9:24 a.m. Court informs defendant of his rights and admonishes others present for arraignment to listen to rights as they are read - defendant understands rights

Mr. Jensen enters not-guilty pleas

FILED-DISTRICT COURT
CASE # _____
TIME 11:00 AM

AUG 3 2015

PATTY TEMPLE, CLERK
 DEPUTY

Court enters pleas, will sets for jury trial, inquires re: how quickly to have status

Mr. Jensen cites to statute of limitations issue which may be dispositive

Court responds, cites to co-defendants handled by Judge Crabtree due to prior employment with Minidoka Prosecutor, cites to warrant served at some point in Montana

Mr. Jensen responds, comments further re: argument before court

Mr. Stevenson nothing further

Court sets status on 9-14, pretrial on 11-9, trial on 11-18 jury

9:29 a.m. recess

FILED-DISTRICT COURT

CASE #

TIME 9:30 AM

AUG 12 2015

PATTY TEMPLE, CLERK

[Signature] DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR MINIDOKA COUNTY

* * * * *

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendants.

CASE NO. CR-2010-550

PRETRIAL SCHEDULING ORDER

IT IS HEREBY ORDERED AS FOLLOWS, pursuant to Rules 12, 16
and 18, Idaho Criminal Rules:

1) JURY TRIAL DATE: Wednesday, November 18, 2015, at the
hour of 9:00 a.m. A total of 3 days have been reserved.
Normally jury trials will begin at 9:00 a.m. and conclude at 5:00
p.m. each day. Counsel are expected to arrive by 8:30 a.m. the
first day of trial and 8:45 a.m. on subsequent days.

2) APPEARANCE OF DEFENDANT: Pursuant to Rule 43, Idaho
Criminal Rules, the defendant is required to be personally
present in court at the following proceedings: arraignment;
status and pre-trial conferences; hearings on all motions and
arguments on questions of law (including but not limited to
motions regarding bail, motions for suppression of evidence,
PRETRIAL SCHEDULING ORDER

motions in limine regarding evidence at trial); at every stage of trial including impaneling of the jury and return of the verdict. Failure of the defendant to attend court as required may result in the forfeiture of bond and the issuance of a bench warrant for the arrest of defendant.

3) MOTIONS: The time limits set forth in I.C.R. 12 apply. Motions for changes of venue are governed by I.C.R. 22. All motions must be accompanied by such supporting affidavits as may be required, together with a mandatory memorandum of law that sets forth the specific issue to be addressed in the motion and sets forth the authority in support of the motion. Pursuant to ICR 45(c) and (d), hearings on motions may not be scheduled sooner than seven days following service together with three days for service by mail and upon objection shall be vacated if not timely scheduled. If counsel anticipates pretrial motions, one or more motion hearing dates may be set at arraignment.

4) DISCOVERY CUT-OFF: All discovery pursuant to ICR 15 and 16, should be completed no later than fourteen (14) days prior to the pre-trial conference. Additionally, counsel for the parties shall have disclosed to each other, in writing, no later than fourteen (14) days prior to the pre-trial conference, the names and addresses of all witnesses the party intends to call at trial. This order does not apply to the State's rebuttal witnesses.

5) FURTHER EVIDENCE DISCLOSURE REQUIREMENTS: In the event either party anticipates evidence at trial pursuant to Rules 404, 405, 406, 410, 412, 608 and 609, such evidence must be disclosed so that pretrial motions regarding admissibility can be held before trial. Hearings on 404(b) evidence will generally require a proffer consisting of live testimony from the witness. The parties must also comply with the requirements set forth in ICR 16(b)(7) and 16(c)(4) regarding expert witnesses.

PRETRIAL SCHEDULING ORDER.

6) **SANCTIONS:** Failure to comply with this order will be grounds for imposition of sanctions that may include the following: costs incurred for subpoenas and witness travel expenses; exclusion of witnesses or evidence; jury costs; attorney's fees.

7) **PLEAS OF GUILTY:** The following procedures will apply before the court will accept a plea:

- a. The defendant is required to complete, sign and file a Guilty Plea Advisory document form.
- b. If there is a plea agreement, the agreement will be written and signed by counsel for each party and by the defendant, and filed with the court;
- c. If the Defendant wishes to enter a plea of guilty, written notification of the same is to be filed with the court, signed by the defendant. Trial will not be vacated unless the written and signed notification of intent to plead guilty is filed prior to the trial date along with a waiver of speedy trial to ensure that if the plea of guilty is not entered or is not accepted a trial can be reset;
- d. A specific time may be scheduled by the Clerk for the change of plea hearing. Changes of plea will normally not be conducted during arraignment or at pre-trial conference.

9) **CONTINUANCES:** A continuance of trial will not be granted by the court except upon written stipulation stating the good cause for vacating trial, signed by counsel for each party and by the defendant. The stipulation will be treated as a joint motion and may or may not be granted. If the continuance will result in delay of trial beyond the time frame for conducting speedy trial, the continuance will not be granted unless the

defendant signs and files a written waiver of his/her right to speedy trial which acknowledges his right and which expressly waives the right.

DATED This 12th day of August, 2015.

Jonathan P. Brody
JONATHAN P. BRODY
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th of August, 2015,
I served a true, correct copy of the PRETRIAL SCHEDULING ORDER
upon the following "in" the manner provided:

Minidoka County Prosecuting
Attorney
P. O. Box 368
Rupert, ID 83350

() First Class Mail
() Hand Delivery - Basket
(X) Email

Kent D. Jensen
P. O. Box 276
Burley, ID 83318

() First Class Mail
() Hand Delivery - Basket
(X) Email

Betsy Jensen
Clerk of the District Court

By

Heidi Jensen
Deputy Clerk

FILED-DISTRICT COURT

CASE #

TIME 9:00AM

AUG 17 2015

PARTY TEMPLE, CLERK

DEPUTY

Kent D. Jensen (ISB #4424)
JENSEN LAW OFFICE
101 W. 18th St.
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 878-3366
Fax: (208) 515-3464
Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

Case No. CR 2010-550

MOTION TO DISMISS

COMES NOW, the Defendant, pursuant to Idaho Code § 19-3501 (1) and (5), along with Idaho Criminal Rule 48, and petitions this court to dismiss the charges against the defendant. The current charges were filed by the state of Idaho on January 11, 2010 with the issuance of a criminal complaint. The case was designated as CR 2010-081. On February 23, 2010, the case was dismissed. On February 24, 2010 the case was re-filed with the criminal complaint being issued along with an affidavit of probable cause and an arrest warrant. This case was designated CR 2010-550. This case was not brought to trial within the six-month period as required by Idaho Code § 19-3501, even though the state of Idaho knew where the defendant was and filed extradition papers to have the Defendant returned to the state of Idaho.


Additionally, the Defendant seeks a ruling from this court holding that the tolling provision of Idaho Code § 19-404 is inapplicable and barred by the doctrine of laches in this case.

Furthermore, pursuant to Idaho Criminal Rule 48 a misdemeanor charge cannot be refiled. Therefore, when the misdemeanor charge in case CR 2010-081 was dismissed, it should

MOTION TO DISMISS -1-

1 not have been included again in case CR 2010-550, Count II, driving without privileges, should
2 be dismissed. The Defendant desires to present evidence and argument in support of this motion.

3 DATED this 14th day of August, 2015.

4
5 
6 Kent D. Jensen
Attorney for Defendant

7
8 CERTIFICATE OF SERVICE

9 I hereby certify that on this 14th day of August, 2015, I served the foregoing Motion to
10 Dismiss upon the attorney for Idaho by e-mail, addressed as follows:

11 Minidoka County Prosecutor

12 cdrapec@co.minidoka.id.us

13
14 
15 Kent D. Jensen

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MOTION TO DISMISS -2-

Kent D. Jensen (ISB #4424)
JENSEN LAW OFFICE
101 W 18th St.
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 878-3366
Fax: (208) 515-3464
Attorney for Defendant

FILED-DISTRICT COURT

CASE #

TIME 9:00AM

AUG 17 2015

PATTY TEMPLE, CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

Case No. CR 2010-550

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS.

FACTS

On December 1, 2009, an Idaho state trooper pursued a vehicle which the state claims that Mr. Morgan was driving. Mr. Morgan was not arrested on this date. On January 11, 2010, the state of Idaho filed case number CR 2010-081 charging Mr. Morgan with felony eluding and driving without privileges. An arrest warrant was issued in the amount of \$10,000 at the time. On February 23, 2010, case number CR 2010-081 was dismissed. No reason was given for this dismissal, however on February 24, 2010; a new complaint was filed and designated as CR 2010-550. Charges in the new complaint were identical to case number CR 2010-081. An arrest warrant was once again issued and bond was set in the amount of \$10,000 dollars. See Exhibit A

In the meantime, Mr. Morgan was arrested in the state of Montana. An arrest warrant issued in the case number CR 2010-081 was served on Mr. Morgan in the state of Montana on January 21, 2010. Curiously, the warrant issued in case number CR 2010-550, even though it was issued in February 2010, indicates that it was also served on January 21, 2010, fully a

Memorandum in Support of Motion to Dismiss -1-

month before the case was actually opened on February 24, 2010. See Exhibit A

On March 3, 2010, Gov. Butch Otter of the state of Idaho submitted an extradition request to the governor of Montana. See Exhibit B An extradition case was opened in the state of Montana and on May 20, 2010, Mr. Morgan appeared in court to be sentenced in Montana for possession with intent to distribute and tampering with evidence, both felony charges. At the same time, the court acknowledged that the state of Montana had a governor's warrant and that Mr. Morgan was willing to waive extradition. See Exhibit C Mr. Morgan was then given a sentence of 15 years with five imposed and 10 suspended for both counts. However, the state of Idaho did not take custody of Mr. Morgan and after completion of five years, and Mr. Morgan was released on parole.

On January 6, 2015, Mr. Morgan was discharged on parole. Taking advantage of the interstate compact, Mr. Morgan returned to the state of Idaho. He started working and even enrolled in an auto body course through Idaho State University. No mention was ever made to him upon his release on parole of the existence of the warrant in the 2010-550 case. Mr. Morgan was arrested on the outstanding warrant in this case after police were called for a disturbance in his neighborhood. Mr. Morgan challenges the validity of this prosecution claiming that it should be dismissed pursuant to Idaho Code § 19-3501 and that it is furthermore time-barred by the pertinent statute of limitations of five years as set out in Idaho Code § 19-402.

ARGUMENT

I. Idaho Code § 19-3501 (1) requires dismissal of this case for failure to prosecute within the six-month period prescribed by the statute.

In analyzing this case, it is important to establish the timeline involved in the court filings with regard to these charges. On January 11, 2010, criminal complaint was filed charging

Memorandum in Support of Motion to Dismiss -2-

1 Mr. Morgan with a violation of Idaho Code §49-1404 (2) and a violation of Idaho Code § 18-
2 8001 (2) driving without privileges-a second offense. At the same time this case was opened a
3 warrant was issued for Mr. Morgan's arrest. On January 21, 2010, the warrant was returned
4 indicating that Mr. Morgan had been served in Montana. The next entry in the case is "Motion
5 to Dismiss" followed by an "Order to Dismiss" both of which were filed on February 23, 2010.
6

7 On February 24, 2010, a new case was filed with the case number of CR 2010-550
8 charging Mr. Morgan with the same offenses found in CR 2010-081. Both files indicate that the
9 violation occurred on December 21, 2009. Clearly both files referred to the same two crimes.
10 The next date of interest, is the issuance of a warrant of arrest on February 24, 2010, and then a
11 notation entered on February 12, 2014, in case CR 2010-550, that Mr. Morgan was served on
12 January 21, 2010 in Montana.
13

14 On March 3, 2010, at the request of Lance Stevenson, the prosecuting attorney for
15 Minidoka County, Governor Butch Otter issued a request for extradition of Mr. Morgan from
16 the state of Montana. On May 20, 2010, the court minutes in Lake County, Montana, indicate
17 that there was a warrant of extradition and that extradition proceedings had been opened with
18 regard to Mr. Morgan. On that date Mr. Morgan was to be sentenced on his Montana cases. The
19 court minutes indicate that Mr. Morgan on that date, waived extradition. Because of his waiver,
20 the extradition cases were then closed. However, the state of Idaho made no attempt to bring
21 Mr. Morgan back to the state of Idaho and allowed five years to pass before Mr. Morgan was
22 arrested on May 21, 2015, on the warrant issued in this case.
23

24 Idaho Code § 19-3501(1) states that "the court, unless good cause to the contrary is
25 shown, must order the prosecution or indictment to be dismissed, in the following cases:
26

27 (1) When a person has been held to answer for a public offense, if an indictment or information
28

29 Memorandum in Support of Motion to Dismiss -3-
30

1 is not found against him and filed with the court within six (6) months from the date of his
2 arrest." In this case, there can be no argument, because there are no facts to support such an
3 argument, that an indictment or information was filed against Mr. Morgan within six months
4 from the date of his arrest. In this case, the indictment or information should have been filed
5 within six months after the arrest warrant was served on January 21, 2010, on Mr. Morgan or on
6 May 20, 2010, when Mr. Morgan waived extradition to the state of Idaho. Under either date, no
7 information or indictment was filed against Mr. Morgan and pursuant to Idaho Code § 19-3501
8 (1) this case must be dismissed.
9

11 Mr. Morgan anticipates that if the court grants his motion to dismiss, that the state will
12 argue that they have some kind of good cause defense to the dismissal and that the Defendant is
13 not prejudiced. However, "a showing of prejudice is not necessary. If the defendant can show
14 an unreasonable delay in prosecution, prejudice is presumed." Olson v. State, 92 Idaho 873, 874,
15 452 P.2d 764, 765 (1969). Mr. Morgan has demonstrated that there was an unreasonable delay
16 in the prosecution of this case. Service of the warrant on January 21, 2010, indicates that the
17 state of Idaho knew where Mr. Morgan was and that his subsequent waiver of extradition
18 provided the state of Idaho with the opportunity to prosecute him for this crime. Yet, no action
19 was taken until five years had passed. Such a delay in the prosecution of this case causes myriad
20 problems with the defense, such as locating witnesses, memory of the events, and an overall
21 inability to look at the case from the freshest perspective.
22

23 There is no evidence whatsoever that Mr. Morgan encouraged any delay in the case. In
24 fact, the evidence indicates that he waived extradition and was willing to be returned to the state
25 of Idaho to face the charges in this case. Why CR 2010-081 was dismissed is inexplicable,
26 especially given the fact that the present case was filed the next day. Since the warrant was
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Memorandum in Support of Motion to Dismiss -4-

1 returned on January 21, 2010, state of Idaho could have begun extradition of Mr. Morgan at that
2 date. However the state did not start extradition proceedings until March 2010. Proceedings in
3 the state of Montana on that extradition request apparently did not take place until May 2010,
4 when Mr. Morgan was set to be sentenced on the Montana charges. If the state had moved
5 forward in January after the warrant was served on Mr. Morgan, with extradition proceedings,
6 then he could have been brought back before the Idaho courts for resolution of this case.
7 However, the state did not undertake to exercise those rights. For this reason and this reason
8 alone, this case should be dismissed.
9

11 **II. Application of the tolling provisions of Idaho Code § 19-404 is subject to the**
12 **doctrine of laches, which prevents the state from refiling the felony charges against Mr.**
13 **Morgan.**
14

15 Mr. Morgan further argues that if the court dismisses this action pursuant to Idaho Code
16 § 19-3501 (1), the state is time barred by way of the statute of limitations set out in Idaho Code
17 § 19-402 from pursuing further prosecution of this action. A dismissal of this current case for
18 failure to bring the matter to trial within the six-month period required by Idaho Code § 19-3501
19 (1), means that the state of Idaho would be refiling the case after the five-year statute of
20 limitations has expired.
21

23 Of course, the state of Idaho will argue that pursuant to Idaho Code § 19-404 allows for
24 tolling of the statute of limitations for the time that Mr. Morgan was in the state of Montana.
25 Mr. Morgan argues that Idaho Code § 19-404 does not apply in his case and that the doctrine of
26 laches prohibits the state from employing the tolling provisions of Idaho Code § 19-404 as a
27 means for refiling the charges in this case. The courts in the state of Idaho have recognized that
28 the doctrine of laches is applicable to a criminal action. For instance the court stated that
29
30

Memorandum in Support of Motion to Dismiss -5-

1 The rule would appear to be that: "Where a new trial is necessitated because a
2 conviction has been reversed on appeal or set aside on habeas corpus [or where one
3 complaint is dismissed and another filed], the delay between the original indictment
4 and the ultimate trial is not due to any laches on the part of the state; it therefore does
5 not entitle the accused to discharge under a statute providing that he must be
6 discharged if his case is not brought to trial within a designated time after
7 indictment." 21 Am.Jur.2d, Criminal Law § 245; Ex parte Meadows, 71 Okl.Cr. 353,
112 P.2d 419 (1941). See also State v. Goodmiller, 86 Idaho 233, 386 P.2d 365
(1963); State v. Stewart, 87 Idaho 210, 392 P.2d 180 (1964).

8 Olson v. State, 92 Idaho 873, 875-76, 452 P.2d 764, 766-67 (1969).

9 Laches is defined by Blacks Law Dictionary as a maximum that equity aids the vigilant
10 and not those who slumber on their rights. It is defined as neglect to assert right or claim which
11 taken together with lapse of time and other circumstances causing prejudice to adverse party,
12 operates as a bar in court of equity. The neglect for an unreasonable and unexplained length of
13 time under circumstances permitting diligence, to do what in law, should have been done.

14 Mr. Morgan argues that there is ample evidence to support an application of the doctrine of
15 laches as a bar against the tolling provisions of Idaho Code § 19-404. As has been already
16 outlined in this brief, Mr. Morgan waived extradition from the state of Montana. Additionally,
17 there was ample time from January 21, 2010, until Mr. Morgan was sentenced in May 2010, to
18 initiate proceedings to have him brought back to the state of Idaho. The dismissal and refile of
19 the case, after the warrant had been served is perplexing, and indicates that the state delayed this
20 matter to the detriment of Mr. Morgan.

21
22 **III. Count II found in case CR 2010-550 must be dismissed as Idaho Criminal Rule**
23 **48 (c) prohibits the refiling of the misdemeanor charge which has been dismissed by the**
24 **court.**

25
26 Finally, there is no justification for refiling Count II, the charge for driving without
27 privileges, misdemeanor. Idaho Criminal Rule 48 (c) states that a dismissal of an action which
28 is a misdemeanor is a bar to further prosecution of that charge. On February 23, 2010, the court
29
30

Memorandum in Support of Motion to Dismiss -5-

1 dismissed case CR 2010-081. The next day this case was filed. Both cases have the same date as
2 the date that the offense was committed. In other words, the misdemeanor charges in both cases
3 are identical. Consequently, the new criminal complaint filed on February 24, 2010, containing
4 the same misdemeanor charge as the case which was dismissed, cannot be prosecuted and
5 should be dismissed.
6

7 CONCLUSION

8
9 Therefore, the Defendant respectfully requests that this Court dismiss this action against
10 him, and that the court further issue an order stating that the state of Idaho is barred from any
11 further prosecution of this action by the doctrine of laches.
12

13
14 DATED this 14th day of August, 2015.

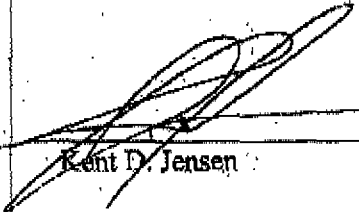
15
16 
17 Kent D. Jensen
18 Attorney for Defendant

18 CERTIFICATE OF SERVICE

19 I hereby certify that on this 14th day of August, 2015, I served the foregoing
20 Memorandum in Support of Motion to Dismiss upon the attorney for Idaho by e-mail,
21 addressed as follows:

22 Minidoka County Prosecutor

23 cdraper@co.minidoka.id.us

24
25 
26 Kent D. Jensen
27
28
29
30

Memorandum in Support of Motion to Dismiss -7-

EXHIBIT A

Case History

Cases for: **Morgan, Dustin Jade**
Minidoka

2 Cases Found.

State of Idaho vs. Dustin Jade Morgan						
Next hearing scheduled: 09/14/2015 9:00 AM						
Case: CR-2010-0000550	District	Judge: Jonathan Brody	Amount due: \$0.00	Pending		
Charges:	Violation Date	Charge	Citation	Degree	Disposition	
	12/21/2009	149-1404(2) Officer-Flee or Attempt to Elude a Police Officer		Felony		
		Officer: BINGHAM, AARON, 0001				
	12/21/2009	118-8001 {3}		Misdemeanor		
		Driving Without Privileges (Third Offense)				
		Officer: BINGHAM, AARON, 0001				
Pending hearings:	Date/Time	Judge	Hearing Type			
	09/14/2015 9:00 AM	Jonathan Brody	Status			
	11/09/2015 9:00 AM	Jonathan Brody	Pretrial Conference			
	11/18/2015 9:00 AM	Jonathan Brody	Jury Trial			
Register of actions:	Date					
	02/24/2010 New Case Filed - Felony					
	02/24/2010 Prosecuting Attorney Assigned Lance D Stevenson					
	02/24/2010 Criminal Complaint					
	02/24/2010 Affidavit Of Probable Cause for Warrant of Arrest					
	02/24/2010 Warrant Issued - Arrest Bond amount: 10000.00 Defendant: Morgan, Dustin Jade					
	02/24/2010 Case Sealed					
	09/14/2010 Ltr from def requesting PD					
	09/15/2010 Defendant: Morgan, Dustin Jade Order Appointing Public Defender Public defender Mini-Cassia Public Defender					
	09/20/2010 Notice of defendant's request for discovery					
	10/04/2010 Motion to Permit Attorney to Withdraw					
	10/05/2010 Order Permitting Attorney to Withdraw-Clayne Zollinger apt'd					
	10/05/2010 Defendant: Morgan, Dustin Jade Order Appointing Public Defender Public defender Clayne S. Zollinger Jr.					
	10/21/2010 Request For Discovery					
	02/12/2014 Change Assigned Judge (batch process)					
	Warrant Returned Defendant: Morgan, Dustin Jade-served 1/21/10 in Montana;					
	05/21/2015 was subsequently released from MT prison and rearrested on our warrant 5/18/15					
	05/21/2015 Case Un-sealed					

05/21/2015 Arraignment / First Appearance
 05/21/2015 Court Minutes-bond \$10,000.00; Ct. conts Mr. Zollinger's apt
 05/21/2015 Order-Preliminary 6/3/15 1:30PM
 05/21/2015 Hearing Scheduled (Preliminary 06/03/2015 01:30 PM) Elude an Officer/DWP
 3rd Offense
 05/21/2015 Notice Of Hearing
 Hearing result for Preliminary scheduled on 06/03/2015 01:30 PM: Continued
 06/04/2015 Elude an Officer/DWP 3rd Offense (Mr. Jensen to submit substitution/waiver of
 time)
 06/04/2015 Defendant: Morgan, Dustin Jade Appearance Through Attorney Kent D. Jensen
 06/04/2015 Substitution Of Counsel
 06/04/2015 Motion to Continue Preliminary Hearing
 06/04/2015 Waiver of Time of Preliminary Hearing
 06/04/2015 Hearing Scheduled (Preliminary 06/17/2015 01:30 PM) Elude an Officer/DWP
 3rd Offense
 06/04/2015 Notice Of Hearing
 06/12/2015 Notice of Service
 06/17/2015 Hearing result for Preliminary scheduled on 06/17/2015 01:30 PM: Continued
 Elude an Officer/DWP 3rd Offense
 06/17/2015 Hearing Scheduled (Preliminary 07/01/2015 01:30 PM) Elude an Officer/DWP
 3rd Offense
 06/17/2015 Notice Of Hearing
 06/23/2015 Motion for Transport
 06/30/2015 Motion to continue Preliminary Hearing
 06/30/2015 Order to Continue Hearing
 06/30/2015 Hearing result for Preliminary scheduled on 07/01/2015 01:30 PM: Continued
 Elude an Officer/DWP 3rd Offense
 06/30/2015 Hearing Scheduled (Preliminary 07/23/2015 10:00 AM) Elude an Officer/DWP
 06/30/2015 Return of Service- 06/22/2015 7:55 pm S. Burwell
 07/02/2015 Subpoena Returned
 07/06/2015 Motion for Transport
 07/06/2015 Order for Transport
 07/23/2015 Waiver of Preliminary Hearing
 07/23/2015 Order
 07/23/2015 Hearing result for Preliminary scheduled on 07/23/2015 10:00 AM: Preliminary
 Hearing Waived (bound Over) Elude an Officer/DWP
 07/24/2015 Information
 07/24/2015 Hearing Scheduled (Arraignment 08/03/2015 09:00 AM)
 07/24/2015 Notice Of Hearing
 07/30/2015 Response to Request for Discovery
 Court Minutes Hearing type: Arraignment Hearing date: 8/3/2015 Time: 9:21
 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes
 08/03/2015 Clerk: Janet Sunderland Tape Number: Defense Attorney: Kent Jensen
 Prosecutor: Lance Stevenson
 08/03/2015 Hearing result for Arraignment scheduled on 08/03/2015 09:00 AM:
 Arraignment / First Appearance
 08/11/2015 Hearing Scheduled (Status 09/14/2015 09:00 AM)
 08/11/2015 Hearing Scheduled (Pretrial Conference 11/09/2015 09:00 AM)
 08/11/2015 Hearing Scheduled (Jury Trial 11/18/2015 09:00 AM)
 08/11/2015 Notice Of Hearing

08/12/2015 Pretrial Scheduling Order

State of Idaho vs. Dustin Jade Morgan

No hearings scheduled

Case: CR-2010-0000081	Magistrate Judge: Larry R. Duff	Amount due: \$0.00	Closed
------------------------------	--	---------------------------	---------------

Charges:	Violation Date	Charge	Citation	Degree	Disposition
	12/21/2009	149-1404(2) Officer-Flee or Attempt to Elude a Police Officer Officer: BINGHAM, AARON, 0001		Felony	Finding: Dismissed on Motion of the Prosecutor Disposition date: 02/23/2010 Fines/fees: \$0.00
	12/21/2009	118-8001 (2) Driving Without Privileges (Second Offense) Officer: BINGHAM, AARON, 0001		Misdemeanor	Finding: Dismissed on Motion of the Prosecutor Disposition date: 02/23/2010 Fines/fees: \$0.00

Register of actions:

Date	
01/11/2010	New Case Filed - Felony
01/11/2010	Prosecuting Attorney Assigned Lance D Stevenson
01/11/2010	Criminal Complaint
01/11/2010	Affidavit Of Probable Cause
01/11/2010	Warrant Issued - Arrest Bond amount: 10000.00 Defendant: Morgan, Dustin
01/11/2010	Case Sealed
01/21/2010	Warrant Returned Defendant: Morgan, Dustin Jade-warrant served on Def In Montana 1/21/10
01/21/2010	Case Un-sealed
02/23/2010	Motion to Dismiss
02/23/2010	Order to Dismiss

Connection: Public

EXHIBIT B



State of Idaho

THE GOVERNOR OF THE STATE OF IDAHO

TO HIS EXCELLENCY, BRIAN SCHWEITZER, THE GOVERNOR OF THE STATE OF MONTANA

WHEREAS, it appears by the annexed application for requisition and copies of the warrant, complaint and other supporting documents, which I certify are authentic and duly authenticated in accordance with the laws of the State of Idaho, that under the laws of this State, **DUSTIN JADE MORGAN** stands charged with the crime of **FELONY ELUDING AND DRIVING WITHOUT PRIVILEGES**, in **MINIDOKA** County, committed in this State, and it has been represented and is satisfactorily shown to me that the accused was present in this State at the time of the commission of said crime, and fled from the justice of this State, and is now to be found in the State of **MONTANA**.

NOW, THEREFORE, pursuant to the provisions of the Constitution and laws of the United States and the laws of the State of Idaho and the laws of the State of **MONTANA**, in such case made and provided,

I DO HEREBY RESPECTFULLY DEMAND that said **DUSTIN JADE MORGAN**, fugitive from justice, be arrested and secured and delivered to **MINIDOKA** County Sheriff **KEVIN HALVERSON**, and/or his designated agent, who is hereby authorized to receive, convey and transport him to this State, here to be dealt with according to law.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of State. Done at Boise City, the Capital of Idaho, this 3rd day of March, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty fourth.

[Handwritten Signature]

By the Governor:

[Handwritten Signature]
Secretary of State

STATE OF IDAHO

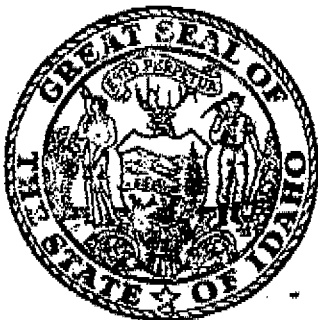
Executive Department

THE GOVERNOR OF THE STATE OF IDAHO:

To All to Whom These Presents Shall Come, SENDS GREETING:

KNOW YE, That I, C.L. "Butch" Otter, Governor of the State of Idaho, have authorized and empowered, and by these presents do authorize and empower Sheriff KEVIN HALVERSON, and/or his designated agent, as agent on the part of this State to receive from the proper authorities of the State of MONTANA, **DUSTIN JADE MORGAN**, fugitive from justice, and convey him to this State, to be dealt with according to law. All persons are therefore requested to permit the said Agent at his or her own proper cost, to remove the said **DUSTIN JADE MORGAN**, and to transport him unmolested into this State, the said Agent peaceably and lawfully behaving.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State to be affixed.



Done at Boise City, this 3rd day of March, two thousand ten, and of the Independence of the United States of America the two hundred and thirty fourth.

BY THE GOVERNOR

A handwritten signature in black ink, appearing to read "C.L. Otter".

A handwritten signature in black ink, appearing to read "Ben Yuma".

Secretary of State

STATE OF IDAHO
EXECUTIVE DEPARTMENT

CERTIFICATE

I, **BEN YSURSA**, Secretary of State of the State of Idaho, do hereby certify that I am the legal custodian of the official records of appointments and of the election records of the State of Idaho, and I do hereby certify:

1. That **C.L. "BUTCH" OTTER** is the duly elected, qualified and acting Governor of the State of Idaho, and that his signature contained in the documents hereunto annexed is genuine.

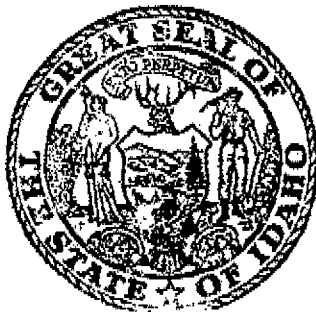
2. That **LANCE D STEVENSON** is the duly elected, qualified and acting Prosecuting Attorney of MINIDOKA County, State of Idaho.

3. That **DUANE SMITH** is the duly elected, qualified and acting Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of MINIDOKA.

4. That **LARRY R DUFF** is a Judge of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of MINIDOKA.

5. That **LAWRENCE G. WASDEN** is the duly elected, qualified and acting Attorney General in and for the State of Idaho.

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF IDAHO, at Boise, Idaho, Ada County, Idaho, this 3rd day of March, 2010.





BEN YSURSA

APPLICATION FOR REQUISITION

To the Governor of the State of Idaho:

I, **LANCE D. STEVENSON**, Prosecuting Attorney of Minidoka County, State of Idaho, hereby apply for requisition to the Governor of the State of *MONTANA* for the apprehension and rendition of *DUSTIN JADE MORGAN* who stands charged by Complaint pending in the Fourth Judicial District in and for the County of Minidoka, State of Idaho, with the crimes of: *FELONY ELUDING AND DRIVING WITHOUT PRIVILEGES*, committed in Minidoka County, Idaho, but who has, since the commission of said offenses, and before an arrest could be made upon process issued by said Court, and with a view of avoiding justice, fled from the State of Idaho, and is now a fugitive from the justice of this State, and is now, as your petitioner verily believes, to be found in or about the County of *LAKE COUNTY*, in the State of *MONTANA*.

The offenses with which said fugitive is charged are felonies under Sections 49-1404(2)(a) of the Idaho Code, a misdemeanor under Section 18-8001(5), and was committed under the following circumstances: The said offenses were committed on or about the *21st* day of *December, 2009*, in said County and State. Please see attached copies of Complaint. My information that the said accused is to be found as aforesaid is based upon information received by me as follows: Teletype received from the Minidoka County Sheriff's Department.

The ends of justice, in my opinion, require that the said fugitive be brought back to this State for trial; this application is presented in triplicate, accompanied with three (3)

certified copies of the warrant issued for the arrest of said fugitive, and three (3) certified copies of the said Complaint filed against said fugitive.

In my opinion, the prosecution of said fugitive will result in conviction and I believe I have sufficient evidence to convict.

I nominate Sheriff Kevin Halverson of the Minidoka County Sheriff's Office or his Agent as a proper person to be appointed Agent of the State of Idaho to receive the said fugitive and bring him to this State for trial. I certify that the person nominated by me has no private interest in the proposed extradition and that this proceeding is not instituted to enforce a private claim, and neither this extradition nor any subsequent criminal proceeding will be used for any private or civil purpose.

I certify that Minidoka County will bear all expenses incidental to return of said fugitive to the State of Idaho.

I transmit herewith in triplicate the following additional and supporting instruments: Complaint, Warrant, Fingerprints and Mugshot.



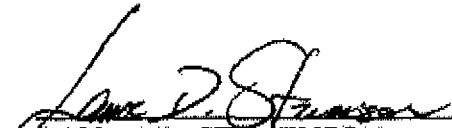
LANCE D. STEVENSON

Minidoka County Prosecuting Attorney

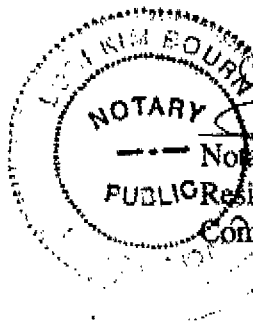
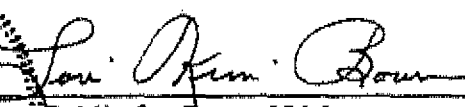
STATE OF IDAHO)
), ss:
County of Minidoka)

The above named, **LANCE D. STEVENSON**, being first duly sworn, deposes and says: That he executed the foregoing Application For Requisition, and prepared the same;

That the facts therein stated are true as he verily believes.


LANCE D. STEVENSON
Minidoka County Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 1st day of March, 2010.

 
Notary Public for State of Idaho
Residing in Rupert, Idaho.
Commission expires: 10-5-2010

APPLICATION FOR REQUISITION 0, Page 3

CERTIFICATIONS

STATE OF IDAHO)
) ss:
County of Minidoka)

I, *LARRY R. DUFF*, Judge of the Fifth Judicial Magistrate Court, in and for the County aforesaid, do hereby certify that the foregoing and hereunto annexed copy of the original complaint on file in my court is a full, true and correct of the said instrument and that the foregoing and hereunto annexed copy of the warrant of arrest is a full, true, and correct copy of the original warrant of arrest issued from my court for the arrest of the within named fugitive from justice.

WITNESS my hand this 2 day of March, 2010,


LARRY R. DUFF
Judge

STATE OF IDAHO)
) ss:
County of Minidoka)

I, **DUANE SMITH**, Clerk of the Magistrate Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, and ex-officio Auditor and Recorder of said County, do hereby certify:

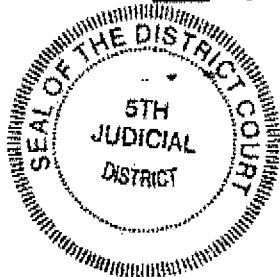
That **LANCE D. STEVENSON**, who executed the foregoing application for requisition is the duly elected Prosecuting Attorney of said County, qualified and acting, and his signature in the several places where the same appears in said application and supporting instruments, is genuine and entitled to full credit.


That, whose signature appears in attestation of instruments annexed to the foregoing application, is the duly elected, qualified and acting Judge of the Fifth Judicial Magistrate Court of Minidoka County, and that his signature hereinbefore appearing is genuine and entitled to credit, and where attested by seal, such seal is genuine.

That the signatures appended to each of the several instruments constituting said application and attached thereto are genuine, properly attested in conformity with the law of Idaho, and are entitled to credit.

CERTIFICATIONS 0, Page 2

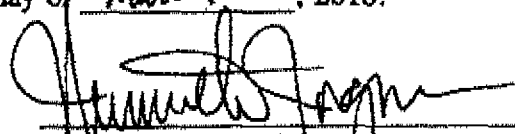
WITNESS my hand and seal of said Magistrate Court, a court of record and general jurisdiction this 2nd day of March, 2010.




DUANE SMITH
Clerk of the Court

Approved as to form

the 4th day of March, 2010.


for LAWRENCE G. WASDEN
Deputy Attorney General

Let Requisition issue.


C.L. "BUTCH" OTTER
Governor

LANCE D. STEVENSON
Minidoka County Prosecuting Attorney
P. O. Box 368
Rupert, Idaho 83350
Telephone: (208) 436-7187

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CASE #
)	
vs.	)	A F F I D A V I T
)	
DUSTIN JADE MORGAN,	)	OF PROBABLE CAUSE
)	
Defendant.)	
_____)	

STATE OF IDAHO)
	) ss:
County of Minidoka)

Larry R. Duff, being first duly sworn, deposes and says:

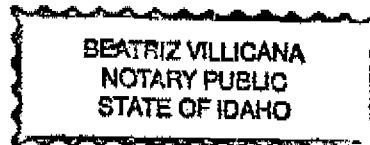
That on the *24th* day of *January*, *2010*, the State filed with Minidoka County Magistrate Court a Complaint, in the case of the State of Idaho vs. *DUSTIN JADE MORGAN*, charging the crimes of *ELUDING, FELONY*, and *DRIVING WITHOUT PRIVILEGES, MISDEMEANOR*;


That the basis for the issuance of the Warrant of Arrest and signing of the Complaint was an independent Probable Cause finding made by myself that sufficient evidence was present to charge Dustin Jade Morgan for said crimes.

DATED This 2 day of March, 2010.


LARRY R. DUFF
Magistrate Judge

SUBSCRIBED AND SWORN to before me this 02nd day of March, 2010.




Notary Public for the State of Idaho
Residing in Rupert, Idaho.
Commission expires: 10/01/2014

MINIDOKA COUNTY, IDAHO
FILED
FEB 24 2010

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney* (ISB#7733)
ALAN GOODMAN, *Deputy Prosecuting Attorney* (ISB#2778)
MICHAEL P. TRIBE, *Deputy Prosecuting Attorney* (ISB#2778)
ROBERT S. HEMSLEY, *Deputy Prosecuting Attorney* (ISB#7955)
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

6th JUDICIAL DISTRICT COURT
MAGISTRATE DIVISION

ATTORNEYS FOR STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA
MAGISTRATE COURT**

STATE OF IDAHO,	)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>CRIMINAL COMPLAINT</u>
)	
DUSTIN MORGAN,)	
)	
Defendant.)	

Personally appeared before me this 23rd day of February, 2010,
Dave Pinther, of the Minidoka County Sheriff's Department, in the County of
Minidoka, State of Idaho, who, being first duly sworn, complains of Dustin Morgan,
and charges him with the public offense of:

CRIMINAL COMPLAINT - 1

SCANNED

COUNT I
FELONY ELUDING
Felony
Idaho Code Section 49-1404(2)(a)

That the said defendant, Dustin Morgan, on or about the 21st day of December, 2009, in the County of Minidoka, State of Idaho, committed the public offense of FELONY ELUDING, in violation of Idaho Code Section 49-1404(2)(a), by willfully, intentionally, unlawfully, and feloniously operating a motor vehicle, to-wit: a gray 1994 Acura Integra, bearing Idaho license plate 2P22424, at our about Interstate 84 milepost 204 to Interstate 84 milepost 208, Minidoka County, Idaho, and willfully eluding a pursuing police vehicle after being given a visual signal and/or audible signal to stop, and in so doing traveled in excess of thirty (30) miles per hour above the posted speed limit, to-wit: one hundred and twenty (120) miles per hour.


COUNT II
DRIVING WITHOUT PRIVILEGES
(MORE THAN TWO (2) WITHIN FIVE (5) YEARS)
Misdemeanor
Idaho Code Section 18-8001(5)

That the said defendant, Dustin Morgan, on or about the 21st day of December, 2009, in the County of Minidoka, State of Idaho, committed the public offense of DRIVING WITHOUT PRIVILEGES, in violation of Idaho Code Section 18-8001(5), by willfully, intentionally, and unlawfully was in actual physical control of a gray 1994 Acura Integra, bearing Idaho license plate 2P22424, upon a highway, to-wit: Interstate 84 milepost 204 to Interstate 84 milepost 208, Minidoka County, Idaho knowing his operator's license or permit was suspended in Idaho, and while having pled guilty to or having been found guilty of at least two violations of Idaho Code Section 18-98001 within the previous five years.

CRIMINAL COMPLAINT - 2

All of which is contrary to the form of the statute in said state made and provided and against the peace and dignity of the State of Idaho.

WHEREFORE, your affiant prays for a Warrant for the arrest of Dustin Morgan and that he may be dealt with according to law.


Dave Pinther

Subscribed and sworn to before me this 23 day of February, 2010.


Magistrate Judge

DEMAND FOR NOTICE OF ALIBI DEFENSE

Pursuant to Section 19-519, Idaho Code, the Prosecuting Attorney of Minidoka County, State of Idaho, or his Deputy, does hereby make written demand upon the defendant named in the above and foregoing Complaint and that the defendant shall serve within ten (10) days or at such different times as the Court may direct, upon the Prosecuting Attorney of Minidoka County, State of Idaho, P. O. Box 368, Rupert, Idaho, 83350, a written notice of his/her intention to offer a defense of alibi. Such notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and names and addresses of the witnesses upon whom he/she intends to rely to establish such alibi.

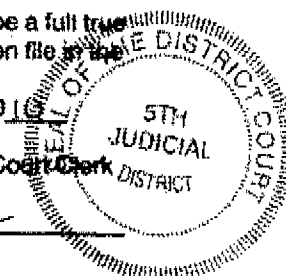
By 
Prosecuting Attorney's Office

CRIMINAL COMPLAINT - 3

State of Idaho)
County of Minidoka) ss
I hereby certify the foregoing to be a full true
and correct copy of the original on file in the
above entitled action.
Dated: February 26, 2010

Duane Smith, Minidoka County Court Clerk

By: 
Deputy Clerk



WARRANT OF ARREST

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY
MAGISTRATE DIVISION**

STATE OF IDAHO)
) ss.
County of Minidoka)

CR-2010-550

TO ANY SHERIFF, CONSTABLE, MARSHALL, OR POLICEMAN OF SAID STATE:

A Complaint on oath, having been laid before me by **Dave Pinther** and there appearing that there is probable cause to believe that a felony, namely, the crime(s) of **FELONY ELUDING**, in violation of Idaho Code Section 49-1404(2)(1), and a misdemeanor, **DRIVING WITHOUT PRIVILEGES**, in violation of Idaho Code Section 18-8001(5), has been committed within the County of Minidoka, State of Idaho, and accusing **Dustin Morgan** thereof, you are therefore commanded forthwith to arrest the above named **Dustin Morgan** of **Lake County Jail, 106 4th Ave. E., Polson, Montana,** either in day or nighttime, and bring him before me, at my office in the Minidoka County Judicial Building at the City of Rupert, County of Minidoka, State of Idaho, or in case of my absence or inability to act, before the nearest or most accessible Magistrate in said County of Minidoka, State of Idaho.

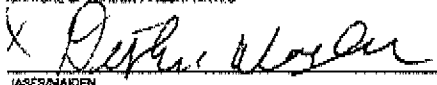
Witness my hand and seal of said court, at the City of Rupert, County of Minidoka, State of Idaho, this 23 day of February, 2010.

BAIL: 10,000.00











State of Idaho)
County of Minidoka) ss.
I hereby certify the foregoing to be a full true and correct copy of the original on file in the above entitled action.
Date: February 24, 2010
Dustin Smith, Minidoka County Court Clerk
By: B. Sullivan
Deputy Clerk

SEAL OF THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT




SEAL OF THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

STATE USAGE <input type="checkbox"/> OFF SECOND <input type="checkbox"/> SUBMISSION <input type="checkbox"/> AMPHIBIOUS GLASS <input type="checkbox"/> AMPUTATION <input type="checkbox"/> ECAR		bfh 116005	
DATE USAGE TCN: ID1330143948		LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX MORGAN, DUSTIN JADE	
SIGNATURE OF PERSON FINGERPRINTED 		SOCIAL SECURITY NO. 519311706	
JAMES BAUDEN LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX		LEAVE BLANK	

FBI NO. 87150FC8	STATE IDENTIFICATION NO. ID00301349	DATE OF BIRTH MM DD YY 03-10-1986	SEX M	RACE W	HEIGHT 603	WEIGHT 150	EYES GRN	HAIR BRO
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 R. THUMB	 R. INDEX	 R. MIDDLE	 R. RING	 R. LITTLE
 L. THUMB	 L. INDEX	 L. MIDDLE	 L. RING	 L. LITTLE

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LX T640 / #7904YDN
20091017

 L. THUMB	 R. THUMB	 RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY
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I certify that this is a true and correct copy of the original on file in this office.
 SHERIFF LORIN W. NIELSEN
 COUNTY OF BAINBRIDGE, IDAHO
 By L. Nielsen



MORGAN, DUSTIN JADE

I certify that this is a true and correct copy of the
original on file in this office.

SHERIFF LORIN W. NIELSEN
COUNTY OF BANNOCK, IDAHO

By *L. Nielsen*

I certify that this is a true and correct copy of the
original on file in this office.

SHERIFF LORIN W. NIELSEN
COUNTY OF BANNOCK, IDAHO

By _____



Idaho Statutes

TITLE 49 MOTOR VEHICLES

CHAPTER 14 TRAFFIC -- ENFORCEMENT AND GENERAL PROVISIONS

49-1404. FLEEING OR ATTEMPTING TO ELUDE A PEACE OFFICER -- PENALTY. (1) Any driver of a motor vehicle who wilfully flees or attempts to elude a pursuing police vehicle when given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a misdemeanor. The signal given by a peace officer may be by emergency lights or siren. The signal given by a peace officer by emergency lights or siren need not conform to the standards for decibel ratings or light visibility specified in section 49-623(3), Idaho Code. It is sufficient proof that a reasonable person knew or should have known that the visual or audible signal given by a peace officer was intended to bring the pursued vehicle to a stop.

(2) An operator who violates the provisions of subsection (1) and while so doing:

- (a) Travels in excess of thirty (30) miles per hour above the posted speed limit;
- (b) Causes damage to the property of another or bodily injury to another;
- (c) Drives his vehicle in a manner as to endanger or likely to endanger the property of another or the person of another; or
- (d) Leaves the state;

is guilty of a felony.

(3) The department shall suspend the driver's license or privileges of a person who has pled guilty or is found guilty of a misdemeanor violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, as provided in section 49-326, Idaho Code. Any person who has pled guilty or is found guilty of a felony violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, shall have his driving privileges suspended by the court for a minimum of one (1) year, which may extend to three (3) years, at the discretion of the court, during which time he shall have absolutely no driving privileges of any kind.

The Idaho Code is made available on the Internet by the Idaho Legislature as a public service. This Internet version of the Idaho Code may not be used for commercial purposes, nor may this database be published or repackaged for commercial sale without express written permission.

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I.C. § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.



Idaho Statutes

TITLE 18 CRIMES AND PUNISHMENTS

CHAPTER 80 MOTOR VEHICLES

18-8001.DRIVING WITHOUT PRIVILEGES. (1) Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320, Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

(2) A person has knowledge that his license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) He has actual knowledge of the revocation, disqualification or suspension of his license, driving privileges or permit to drive; or

(b) He has received oral or written notice from a verified, authorized source, that his license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) Notice of the suspension, disqualification or revocation of his license, driving privileges or permit to drive was mailed by first class mail to his address pursuant to section 49-320, Idaho Code, as shown in the transportation department records, and he failed to receive the notice or learn of its contents as a result of his own unreasonable, intentional or negligent conduct or his failure to keep the transportation department apprised of his mailing address as required by section 49-320, Idaho Code; or

(d) He has knowledge of, or a reasonable person in his situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of his license, driving privileges or permit to drive.

(3) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for the first time:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than two (2) days, and may be sentenced to not more than six (6) months, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars (\$1,000); and

(c) Shall have his driving privileges suspended by the court for an additional six (6) months following the end of any period of

suspension, disqualification or revocation existing at the time of the violation; the defendant may request restricted driving privileges during the period of the suspension or disqualification, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(4) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for a second time within five (5) years, irrespective of the form of the judgment(s) or withheld judgment(s):

(a) Shall be sentenced to jail for a mandatory minimum period of not less than twenty (20) days, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars (\$1,000); and

(c) Shall have his driving privileges suspended by the court for an additional one (1) year following the end of any period of suspension, disqualification or revocation existing at the time of the second violation, during the first thirty (30) days of which time he shall have absolutely no driving privileges of any kind. The defendant may request restricted driving privileges during the period of the suspension or disqualification, to begin after the period of absolute suspension, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(5) Any person who has pled guilty to or been found guilty of more than two (2) violations of the provisions of subsection (1) of this section within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor; and

(a) Shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, and may be sentenced to not more than one (1) year; provided, however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed three thousand dollars (\$3,000); and

(c) Shall have his driving privileges suspended by the court for an additional two (2) years following the end of any period of suspension, disqualification or revocation existing at the time of the violation, during the first ninety (90) days of which time he shall have absolutely no driving privileges of any kind. The defendant may request restricted driving privileges during the period of the suspension or disqualification, to begin after the period of absolute suspension, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(6) A minor may be prosecuted for a violation of subsection (1) of this section under chapter 5, title 20, Idaho Code.

(7) If a person is convicted for a violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, and at the time of arrest had no driving privileges, the penalties imposed by this section shall be in addition to any penalties imposed under the provisions of section 18-8005, 18-8004A, 18-8004C or 18-8006, Idaho Code, and not in lieu thereof.

(8) For purposes of this section, the offenses referred to in subsections (3)(a), (4)(a) and (5)(a) of this section are:

- (a) Section 18-1501(3), Idaho Code, transporting a minor in a motor vehicle while under the influence;
- (b) Section 18-4006(3), Idaho Code, vehicular manslaughter;
- (c) Section 18-8001, Idaho Code, driving without privileges;
- (d) Section 18-8004, Idaho Code, driving under the influence of alcohol, drugs or other intoxicating substances;
- (e) Section 18-8004C, Idaho Code, excessive alcohol concentration;
- (f) Section 18-8006, Idaho Code, aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances;
- (g) Section 18-8007, Idaho Code, leaving the scene of an accident resulting in injury or death;
- (h) Section 49-1229, Idaho Code, required motor vehicle insurance;
- (i) Section 49-1232, Idaho Code, certificate or proof of liability insurance to be carried in motor vehicle;
- (j) Section 49-1401, Idaho Code, reckless driving;
- (k) Section 49-1404, Idaho Code, eluding a police officer;
- (l) Section 49-1428, Idaho Code, operating a vehicle without liability insurance;

or any substantially conforming foreign criminal violation.

(9) In no event shall a person be granted restricted driving privileges unless the person shows proof of liability insurance or other proof of financial responsibility, as provided in chapter 12, title 49, Idaho Code.

(10) In no event shall a person who is disqualified or whose driving privileges are suspended, revoked or canceled under the provisions of this chapter be granted restricted driving privileges to operate a commercial motor vehicle.

The Idaho Code is made available on the Internet by the Idaho Legislature as a public service. This Internet version of the Idaho Code may not be used for commercial purposes, nor may this database be published or repackaged for commercial sale without express written permission.

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I.C. § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.

EXHIBIT C

DC-10-56
DC-10-57
DC-10-12

State of Montana, Plaintiff
-vs-
Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition in DC-10-56 and DC-10-57 and sentencing in DC-10-12. Defendant present with counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Cole-Hodgkinson indicates that the Defendant is willing to waive extradition and the State does have a governor's warrant so at this time the State moves to dismiss the extraditions. No objection by the Defendant. DC-10-56 and DC-10-57 are dismissed.

PSI has been received and reviewed. No additions or corrections. For the offense of CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE, a Felony, Count II the Court commits the Defendant to the DOC for a term of 15 years with 10 years suspended, for the offense of TAMPERING WITH EVIDENCE, a Felony, Count III the Court commits the Defendant to the DOC for a term of 15 years with 10 years suspended to run concurrent with Count II.

All conditions of probation, fines and surcharges in the Plea agreement and all conditions by the probation office are incorporated by reference.

Done this 20th day of May, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr: cc

cc: County Attorney
Nicole Ducheneaux
Sheriff
Probation

-4-

ORIGINAL

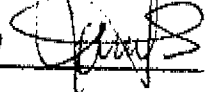
FILED-DISTRICT COURT
CASE #
TIME 10:20 AM

AUG 21 2016

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, Prosecuting Attorney (ISB#7733)
ROBERT S. HEMSLEY, Chief Deputy Prosecuting Attorney (ISB#7955)
ALAN GOODMAN, Deputy Prosecuting Attorney (ISB#2778)
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208) 436-7187
Facsimile: (208) 436-3177

PATTY TEMPLE, CLERK

 DEPUTY

ATTORNEY FOR THE STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

STATE OF IDAHO,)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>OBJECTION TO MOTION TO</u>
	)	<u>DISMISS</u>
DUSTIN JADE MORGAN,)	
)	
Defendant.)	

COMES NOW, the State of Idaho, by and through Lance D. Stevenson, Minidoka Prosecuting Attorney in and for the County of Minidoka, and objects to the Motion to Dismiss as set forth in the Statement of Facts and Argument.

STATEMENT OF FACTS

On January 11, 2010, a criminal complaint, warrant, and affidavit of probable cause was filed in Minidoka Magistrate Court in Minidoka County Case Number CR-2010-81, on Dustin Jade Morgan for the offenses of Felony Eluding, in violation of Idaho Code Section 49-1404(2)(a), and Driving Without Privileges, in

OBJECTION TO MOTION TO- 1
DISMISS

violation of Idaho Code Section 18-8001(5).

On January 21, 2010, the defendant was arrested in Polson County, Montana, on charges of Criminal Possession with Intent to Distribute, Tampering with Evidence, Criminal Endangerment. Montana case number DC-10-12.

On January 21, 2010, the Idaho warrant was received in Montana to detain Dustin Morgan on Idaho charges. On February 23, 2010, the State dismissed this case.

On February 24, 2010, a criminal complaint, warrant, and affidavit of probable cause was re-filed in Minidoka Magistrate Court in Minidoka County Case Number CR-2010-550, on Dustin Jade Morgan for the offenses of Felony Eluding, in violation of Idaho Code Section 49-1404(2)(a), and Driving Without Privileges, in violation of Idaho Code Section 18-8001(5).

On February 26, 2010, the Idaho warrant was received in Montana to detain Dustin Morgan on Idaho charges.

On March 4, 2010, an Application for Requisition was issued by the Governor of the State of Idaho.

On May 20, 2010, the defendant appeared in the State of Montana court in regards to sentencing and extradition. The defendant indicated that he was willing to waive extradition. However, the defendant never formally waived his extradition pursuant to Idaho Code § 19-4530.

On May 18, 2015, Dustin Morgan was arrested on the Idaho warrant in Bannock County in CR-2010-550.

ARGUMENT

The State of Idaho objects to the defendants Motion to Dismiss and the basis is set forth below.

The defense argues that Idaho Code Section 19-3501 (1) requires the

**OBJECTION TO MOTION TO- 2
DISMISS**

dismissal of this case for failure to prosecute within the six-month period prescribed by the statute. However, the right to speedy trial pursuant to Idaho Code § 19-3501 does not apply to a defendant who was returned for trial from another state due to delay caused by his absence. *In re Pearce*, 40 Cal.App.3d 399, 402 (1974); *People v. Underwood*, 162 Cal.App.3d 420, 424 (1984). *Cf. Comm. v. Beauchamp*, 595 N.E.2d 307 (Mass. 1992).

The right to speedy trial pursuant to Idaho Code § 19-3501 does not apply until a warrant for arrest is actually served by the proper authorities. Defense counsel refers that Mr. Morgan was served in 2010 when Montana was willing to extradite Mr. Morgan on a “governor’s warrant”.

In reference to the Defense council reference to the “governor’s warrant” which is a warrantless arrest. In fact the warrant itself on its face does not reference a warrant but instead calls it a governor’s requisition requesting a rendition of which must be in order prior to the fugitive being made available for rendition (transport). *See Yates v. Gilless*, 841 S.W.2d 332 (Tenn. Cr. App. 1992), see Idaho Code § 19-4514. A governor’s rendition is simply used to detain a defendant and to allow transportation of a defendant after local disposition including sentencing is complete in the state to another state. The service of a “governors rendition” a warrantless request, is not service of the actual arrest warrant that would then start the clock for speedy trial pursuant to Idaho Code § 19-3501. *Id.*

The demanding state’s warrant i.e. Idaho’s warrant is not being served. This arrest is “warrantless” because there is no local (asylum state) warrant for the fugitive. *See State v. Hudson*, 921 P.2d 538, 542 (Wash. 1996); *Ex parte Morgan*, 641 So.2d 840, 844 (Ala. 1994); *State v. Lee*, 738 P.2d 1081 (Wash. App. 1987); *State v. Lyrek*, 385 N.W.2d 248 (Iowa 1986); *Street v. Cherba*, 662 F.2d 1037 (4th Cir. 1981); *Holbird v. State*, 650 P.2d 66 (Okl. Cr. 1982); *State v. Everett*, 520 P.2d 301, 303 (Ariz. 1974); *Berigan v. State*, 236 A.2d 743, 744-745 (Md. App. 1968). The actual

OBJECTION TO MOTION TO- 3
DISMISS

warrant of arrest cannot be served until the property authority can serve the warrant pursuant to Idaho Code § 19-4514. Montana's law enforcement does not have the proper authority to serve such a warrant. It wasn't until Mr. Morgan was in Bannock County when the authorized law enforcement had authority to properly serve the warrant and starting the time line consistent with speedy trial. In this case the actual warrant was not served until May 18, 2015.

The Idaho warrant is merely presented to notify all parties that this individual is wanted in the State of Idaho and that they have an interest in his return to Idaho.

Additionally, disposition of local charges, including sentencing, should be completed before the fugitive is made available for rendition. *Id.* Furthermore, occasionally, a fugitive against whom local charges are pending will waive extradition, in hopes that he can speed his removal from the state of and avoid the local charges, of course, Idaho Code § 19-4519 prevents him from doing this.

As noted in I.C. § 19-4519 authorizes the governor to "hold" the fugitive until he has completed his sentence before rendering him up to the demanding state.

Normally, disposition of local charges, including sentencing, should be completed before the fugitive is made available for rendition. *See Yates v. Gillless*, 841 S.W.2d 332 (Tenn. Cr. App. 1992)

In addressing credit for time served the general rule regarding credit for time in custody for a defendant who has been in custody in another jurisdiction because of an untried charge in the demanding state, when finally tried and sentenced there, may be entitled to credit for the time served in the asylum state, even if he resisting extradition during that time. *State v. Carter*, 785 N.W.2d 516 (Wis. 2010)(fugitive entitled to credit for time spent in custody in asylum state in connection to course of conduct for which he was sentenced in demanding state); *People v. Elder*, 910 N.E.2d 202, 207 (Ill. 2009); *People v. Finley*, 141 P.3d 911 (Colo. App. 2006); *Gethers v. State*, 838 So.2d 504 (Fla. 2003) (a defendant is entitled to credit after a warrant is

OBJECTION TO MOTION TO- 4
DISMISS

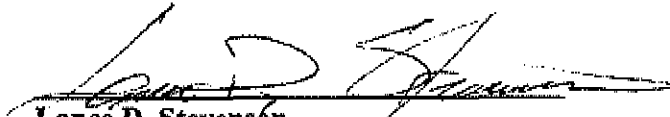
served, and is not entitled to credit merely due to placement of a detainer, unless the defendant is being held in custody on the detainer); *In re Watson*, 566 P.2d 243 (Cal. 1977); *People v. Havey*, 160 N.W.2d 629 (Mich. 1968); *People v. Nagler*, 251 N.Y.S.2d 107 (1964); *State v. Mason*, 900 P.2d 172 (Haw. 1995). But see *West v. State*, 22 So.3d 797 (Fla. App. 2009) (credit for out-of-state time served in another state if demanding state case is sole basis for incarceration is subject to court's discretion).

However, if the defendant was first arrested on a local charge no credit should be given for time spent in custody on that charge. *In re Joyner*, 769 P.2d 967 (Cal. 1989); *Zygadlo v. State*, 676 So.2d 1015 (Fla. App. 1996). Here Mr. Morgan was arrested on Montana charges on January 21, 2010, he was not arrested on Idaho charges until May 18, 2015. Therefore, Mr. Morgan should not be granted credit for time served prior to May 18, 2015.

CONCLUSION

In conclusion, I.C. § 19-3501 does not apply to a warrantless arrest such a "governs requisition or rendition" but only a warrant arrest done by the proper authority within the state of Idaho. Additionally, we request that this Court rule that Mr. Morgan receive only credit for time served after his arrest in Bannock County starting May 18, 2015. Therefore, we request that the Motion to Dismiss be dismissed.

DATED this 21st day of August, 2015.


Lance D. Stevenson
Prosecuting Attorney

OBJECTION TO MOTION TO- 5
DISMISS

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of August,
2015, I delivered a true and correct copy of the within and foregoing document upon
the attorney(s) named below in the manner noted:

Kent D. Jensen

P. O. Box 276

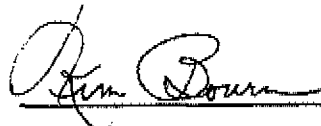
Burley, ID

☐ By depositing copies of the same in the United States mail, postage prepaid, at
the post office in Rupert, Idaho.

☐ By Hand delivering copies of the same to the office of the attorneys(s) at his
office at the address stated above.

☐ By placing copies of the same in the Public Defender's basket located in the
Clerk's Office in the Judicial Annex, Minidoka County Courthouse.

☒ By telecopying copies of the same to said attorneys(s) at 208 - 515 - 3464



Kim Bourn

**OBJECTION TO MOTION TO- 6
DISMISS**

COURT MINUTES

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Motion

Hearing date: 8/24/2015

Time: 2:15 pm

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is present in custody

Court calls case, set for motion to dismiss, state has filed response, have begun to do research and indicates to parties what court has started to look at is issue of interstate agreement on detainers which could affect case, is technical statute, may be question of which warrant was served when, case law suggest that different things can be detainer, comments further, Governor's warrant can be viewed as a detainer and may need to look at issue if is detainer, comments further, if there is detainer may be that there is time served, problem that saw was discussion in Montana about warrant from Idaho and Governor's warrant and would waive extradition and then nothing happened, continues comments, don't know if can decide today, even if can still be prosecuted for crime could have extraordinary amount of time served, comments further

2:20 p.m. Mr. Jensen addresses court, interstate detainer was not even something he looked at, Mr. Morgan has bonded out on this case but has a detainer for Montana, did not expect him to be here today, would like opportunity to address issue if that is what court is looking at

FILED-DISTRICT COURT
CASE # _____
TIME 4:00 pm

AUG 24 2015

PATTY TEMPLE, CLERK

DEPUTY

Court responds, could be scenario where gets time served credit and scenario where he does not, comments further

2:22 p.m. Mr. Stevenson addresses court, cites to response form state, 19-3501 whether be detainer or not, is not an arrest but is basically kidnapping legally and sending defendant to another state, should actually be a Governor's Rendition rather than a warrant

Court responds, has Governor's paperwork

Mr. Stevenson notes that Montana record state's that defendant waived extradition even though no paperwork filed, cannot even serve defendant with our warrant until he is in State of Idaho, was served May 18, 2015, state feels that defendant falls within exception and does not receive credit for time served until arrested in Idaho, comments further

Court responds and cites cases that Court has looked at on this issue,

Mr. Stevenson responds, do get credit if arrest warrant was given before charges in other state explains BUT wasn't served until after defendant was returned to State

Mr. Jensen makes argument in support of motion to dismiss, cites considerations, defendant says he did actually sign waiver but have not been able to track down, may have to make official request for full file

Mr. Stevenson responds, did call Montana and prosecutor stated that defendant had originally state would waive extradition but then when waiver was put in front of him he refused to sign it

Court responds and instructs defendant to not discuss facts right now

Court cites to 2-23-2010 warrant bond at \$10,000 on this case, cites to 5-20-10 minute entry from Montana and then nothing until this year, cites to cases looked at by court of *State V Moliga @ 1131672* an Idaho Court of appeals 1987 case and holding modified by *State V Dorr @ 1201441* which was issue of Federal Charges pending and *State v Bitkoff @ 1571410* which was when defendant was entitled to credit for time served after service of warrant on PV, discusses 18-309 for credit time served prior to judgment and probation statute, there is relevant paragraph on page #413 to #414 of 157Idaho, reads portion into record, cites to *State V Bronkua @ 1091211*, cites to Idaho Code Section 19-2603,

Mr. Stevenson responds, cites to cases cited by State

Court responds and comments further on case law researched, definition of detainer very important for speedy trial right, comments further re: cite to *Carchman V Nash @ 105SC3403*, May be issue of service of warrant in Montana, need to know a little bit more

Mr. Stevenson responds, state would like to see Court address the fact that defendant was not served until in State of Idaho in May 2015

Court responds

Mr. Stevenson responds, only way it could have been served if he was in State of Idaho, do not know that he was in State prior to 5-18-15

Court asks that it be pointed out in argument, inquires where case cites that cannot be served unless in state

Mr. Stevenson responds, argues that Montana State does not have authority to serve Idaho Warrant, was presented to notify all parties that defendant was wanted in state of Idaho

Court cites to 19-4501 fugitives from justice statute, may need to consider, and inquires of state if argument is that defendant was being held on fugitive warrant in Montana

Mr. Stevenson confirms that is argument, was Governor's Rendition

Court cites to 19-4514 statute which looks significant, inquires of Mr. Jensen if wish more time

Mr. Jensen confirms wants more time, notes this case actually predates

Court inquires

Mr. Mike Biggins addresses the court regarding location of defendant in Idaho and Montana Parole violation

Mr. Jensen responds

Court inquires of time frame for Montana extradition and if need to worry about time

Mr. Biggins addresses court re: out of state holds

Court comments, inquires of Mr. Jensen re: additional time needed

Mr. Jensen responds, could be ready in a week, facts will not change

Court responds

Mr. Jensen responds, defendant says his mother has more paperwork that has not seen, contacted Mr. Zollinger but he said did not recall the case, may have a file

Court continues motion to 8-31-15 @ 3:00 p.m. recess @ 3:02 p.m.

Kent D. Jensen (ISB #4424)
JENSEN LAW OFFICE
101 W 18th St.
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 878-3366
Fax: (208) 515-3464
Attorney for Defendant

FILED-DISTRICT COURT
CASE #
TIME 12:15 PM

AUG 31 2015

PATTY TEMPLE, CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

Case No. CR 2010-550

MOTION TO CONTINUE

COMES NOW the Defendant, through his attorney of record Kent D. Jensen, and moves this Court for an Order continuing the Hearing in this matter, which is currently set for Monday, August 31st, 2015 at 3:00 p.m. The Counsel for the needs more time to collect documents. Additionally, the Prosecuting Attorney for the case, having been contacted, has no objections to this Motion.

DATED this 31st day of August, 2015.


Kent D. Jensen
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2015, I served the foregoing Motion to Continue Hearing upon the attorney for Idaho by e-mail, addressed as follows:

Minidoka County Prosecutor

kbourn@co.minidoka.id.us


Kent D. Jensen

MOTION TO CONTINUE -1-

Kent D. Jensen #4424
 101 W 18th St.
 P.O. Box 276
 Burley, Idaho 83318
 Telephone: (208) 878-3386
 Facsimile: (208) 515-3464
 kentj7@gmail.com

FILED-DISTRICT COURT
 CASE #
 TIME 12:27pm
 AUG 31 2015
 PATTY TEMPLE, CLERK
 _____, DEPUTY

Attorney for Defendant

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA**

| STATE OF IDAHO,
 | Plaintiff,
 | vs.
 | DUSTIN JADE MORGAN,
 | Defendant.

| Case No. CR 2010 550
 |
 | ORDER TO CONTINUE HEARING
 |

Being advised in the law and in the premises and for good cause shown, the Court issues the following Order:

IT IS HEREBY ORDERED that based upon the Motion to Continue, the hearing presently set for August 31, 2015, at 3:00 p.m, is hereby continued until the 8th day of September, 2015, at 9:00 o'clock a.m.

DATED this 31st day of August, 2015.


 Honorable Judge Rick L. Dollar

CLERK'S CERTIFICATE OF MAILING

I hereby certify the on this 1st day of ~~August~~^{Sept}, 2015, I served the foregoing Order to Continue upon the interested attorneys by facsimile to the following addresses:

Minidoka County Prosecutor
 208-436-3177


Kent D. Jensen
 208-515-3464


 Clerk

1 Kent D. Jensen (ISB #4424)
2 JENSEN LAW OFFICE
3 101 W 18th St
4 P.O. Box 276
5 Burley, Idaho 83318
6 Telephone: (208) 878-3366
7 Fax: (208) 515-3464
8 Attorney for Defendant

FILED DISTRICT COURT
CASE #
TIME 9:30AM

SEP 11 2015

PATTY TEMPLE, CLERK
 DEPUTY

5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
6 STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

7 STATE OF IDAHO,

8 Plaintiff,

9 vs.

10 DUSTIN JADE MORGAN,

11 Defendant.

Case No. CR 2010-550

OBJECTION TO RESPONSE

12 The state of Idaho in its objection to Mr. Morgan's Motion to Dismiss argues that there
13 was no legal arrest of the Defendant which would trigger the requirements of Idaho Code § 19-
14 3501 (1). The gist of the state's argument is that the authorities in Montana did not have a legal
15 basis to "arrest" Mr. Morgan, and that his detention in the state of Montana was merely a request
16 or "requisition" dependent upon the issuance of an arrest warrant according to extradition papers
17 to be filed by the state of Idaho. Mr. Morgan finds that the state's argument is a distinction
18 without difference, and that he was under arrest pursuant to the warrant issued by the state of
19 Idaho.

20 According to the Justice Court of Lake County, Montana documents in this case, two
21 warrants were issued by the court detaining Mr. Morgan while the extradition process was
22 carried out. Bond was set at \$10,000 for each of these warrants. The documents were entitled
23 warrants and one was dated February 26, 2010 and the other was dated the January 22, 2010.
24 Both of these warrants were accompanied by a Complaint and Affidavit from the Lake County

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30
OBJECTION TO RESPONSE -1-

1 Attorney's office. The complaint and affidavit both stated that there was a warrant for the arrest
2 of Mr. Morgan issued by the state of Idaho.

3 The state's argument leaves one with the impression that an individual cannot be arrested
4 on a warrant issued by a sister state while that individual is present in another state. Such an
5 argument has no basis in either the law of the state of Idaho or the law of the state of Montana.

6 For example, Montana Code § 46-30-301, states that
7

8 The arrest of a person may also be lawfully made by any peace officer or a private person
9 without a warrant upon reasonable information that the accused stands charged in the
10 courts of a state with a crime punishable by death or imprisonment for a term of 1 year or
11 more. When arrested under this section, the accused must be taken before a judge or
12 magistrate with all practicable speed and complaint must be made against the accused
13 under oath setting forth the ground for the arrest as provided in 46-30-227. After the
14 complaint is made, the accused's answer must be heard as if the accused had been
15 arrested on a warrant.

16 The wording of this statute is virtually identical to Idaho Code § 19-4514. Accordingly, an
17 individual may be arrested on an outstanding warrant issued from a neighboring state and
18 detained while the extradition process is ongoing. The two warrants issued in the state of
19 Montana are evidence that this process was undertaken in Mr. Morgan's case. Two warrants
20 pursuant to complaint and affidavit were issued while Mr. Morgan was held in the Lake County
21 jail while the extradition process and the official warrant of arrest to be issued by the governor of
22 Montana was issued. It is merely a matter of semantics to state that Mr. Morgan was not arrested
23 and that he was merely subject to requisition. Under any definition of the word "arrest", Mr.
24 Morgan was arrested in the state of Montana under the Idaho charges.
25

26 For instance, "[i]t has generally been held that an arrest is synonymous with the actual
27 detention of the person or party arrested and does not mean merely the service of a summons or
28
29
30

OBJECTION TO RESPONSE -2-

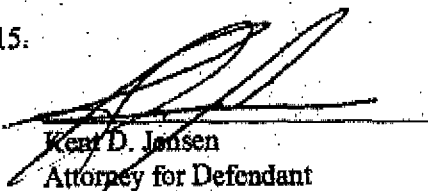
1 citation." *Long v. Ansell*, 69 F.2d 386, 388, 63 App. D.C. 68, 94 (D.C. 1934). The court further
2 explained that it

3 appears that the word "arrest" has a well-defined meaning. There must be some detention
4 of the person to constitute arrest. This of course would mean any arrest made or detention
5 in a criminal proceeding, or an arrest in a civil case in execution of the command of some
6 court or officer of justice. *Legrand v. Bedinger*, 4 T.B. Mon. (Ky.) 539, 540; or as said
7 in *Baltimore & O.R. Co. v. Strube*, 111 Md. 119, 127, 73 A. 697, 700: "An arrest is the
8 seizing of a person and detaining him in the custody of the law." From these authorities it
9 may be concluded, we think, that the term arrest may be applied to any case where a
10 person is taken into custody or restrained of his full liberty, or where the detention of a
11 person in custody is continued for even a short period of time. *People v. Erlanger* (D.C.)
12 132 F. 883.

13 *Id.* In this case, there is no doubt that Mr. Morgan was detained pursuant to the warrant
14 issued by state of Idaho in the present case. To claim that this detention was merely a requisition
15 based upon a warrantless action, does not jive with the law or the facts. A bond of \$10,000 was
16 set, Mr. Morgan was ordered to be detained twice, by a court of the state of Montana, and to
17 claim that this was anything other than an arrest, strains of definition of the word.

18 Therefore, the state's objection is without merit, and does not give the state the latitude to
19 claim that there was no arrest which would trigger the women taking action of Idaho Code
20 section sign 19-3501.

21 DATED this 10 day of September, 2015.

22
23 
24 Kent D. Jensen
25 Attorney for Defendant

26 CERTIFICATE OF SERVICE

27 I hereby certify that on this 12 day of September, 2015, I served the foregoing Motion
28 to Dismiss upon the attorney for Idaho by e-mail, addressed as follows:

29 Minidoka County Prosecutor
30 cdraper@co.minidoka.id.us


Kent D. Jensen

OBJECTION TO RESPONSE -3-

DC-10-56

DC-10-57

DC-10-12

State of Montana, Plaintiff

-vs-

Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition in DC-10-56 and DC-10-57 and sentencing in DC-10-12. Defendant present with counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Cole-Hodgkinson indicates that the Defendant is willing to waive extradition and the State does have a governor's warrant so at this time the State moves to dismiss the extraditions. No objection by the Defendant. DC-10-56 and DC-10-57 are dismissed.

PSI has been received and reviewed. No additions or corrections. For the offense of CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE, a Felony, Count II the Court commits the Defendant to the DOC for a term of 15 years with 10 years suspended, for the offense of TAMPERING WITH EVIDENCE, a Felony, Count III the Court commits the Defendant to the DOC for a term of 15 years with 10 years suspended to run concurrent with Count II.

All conditions of probation, fines and surcharges in the Plea agreement and all conditions by the probation office are incorporated by reference.

Done this 20th day of May, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr: cc

cc: County Attorney
Nicole Ducheneaux
Sheriff
Probation

-4-

DC-10-56

DC-10-57

State of Montana, Plaintiff

-vs-

Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition. Defendant present with substitution counsel Caroline Riss for counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Cole-Hodgkinson indicates that the parties have agreed to continue these matters until after the Defendant is sentenced in DC-10-12.

These matters are continued to Thursday, May 20, 2010 at 9:00 a.m.

Done this 15th day of April, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr: cc

cc: County Attorney

Nicole Ducheneaux

Sheriff

DC-10-56

DC-10-57

State of Montana, Plaintiff

-vs-

Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition. Defendant present with substitution counsel Caroline Riss for counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Riss is requesting a continuance of one (1) week to allow Ms Ducheneaux the opportunity to discuss these matters with the Defendant. No objection by the State. Request granted.

These matters are continued to Thursday, April 15, 2010 at 9:00 a.m.

Done this 8th day of April, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr: cc

cc: County Attorney

Nicole Ducheneaux

Sheriff

THE LAKE COUNTY JUSTICE COURT, STATE OF MONTANA
IN AND FOR THE COUNTY OF LAKE COUNTY
BEFORE THE HONORABLE CHUCK WALL

CLERK OF
DISTRICT COURT
LYN FRICKER

STATE OF MONTANA

Case No: CR2018-000054 AM 9:59

Plaintiff,
vs.

DUSTIN LADY MORGAN

INITIAL APPEARANCE
FELONY

CLERK DEPUTY

Defendant.

DOB: [REDACTED]
DL Number: [REDACTED]
DL State: [REDACTED]
Telephone: (208) 705-7019

Height: 602
Weight: 165
SSN: [REDACTED]
Tribal Member: [REDACTED]

Citing Agency: County Attorney Citing Officer:

Jessica Cole-Hodgkinson CA 3

☐ Defendant present without attorney.

☒ Defendant present with attorney:

State represented by:

Offense Defendant Charged: 46-30-228

Extradition

Maximum Penalty: The State of Idaho requests \$10,000 Bond.

[May include enhancement for subsequent conviction for the same or similar offense, court costs, costs of public defender, costs of confinement and surcharges.]

DEFENDANT'S RIGHTS

Defendant advised of the following rights:

1. Right to be represented by an attorney at every stage of the proceedings.
2. Right to appointment of an attorney if the Defendant is unable to employ an attorney (if the Court retains imprisonment as a sentencing option).
3. Right to remain silent and that any statement may be used against the Defendant in any court.
4. Right to a judicial determination of probable cause.
5. Right to bail as provided by law.
6. That if the Defendant is not a U.S. citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the U.S. or denial of naturalization under federal law.

ATTORNEY:

Appointed

☐ Not appointed/To be retained

☐ Retained and present / not present / notice of appearance filed

BAIL:

\$ 10,000.00

DEFENDANT IS
ORDERED:

☐ No possession and/or consumption of alcohol or non-Rx drugs / No going into bars / Submit to blood, breath analysis, or urine test upon request of officer with probable cause.

☐ No contact with alleged victim(s) named in the complaint

☒ Attend all scheduled Court dates in person unless otherwise notified by attorney

☒ Obey all laws

☒ Keep in contact with attorney / Notify Court of attorney within 20 days

☒ Other: Report to SR Judicial District Court of Idaho within 3 days of release.

ORDERED THIS 26 day of July 2018

Dustin Morgan
Defendant

Chuck Wall, Justice of the Peace

FILED 4/20/10 PM 4:15
MAR 17 2010 PM 4:15

Nicole Ducheneaux
Office of the State Public Defender
110 Main Street, Suite 11
P.O. Box 1150
Polson, MT 59860
Telephone: (406) 883-6080
Facsimile: (406) 883-6089

Attorney for Defendant

**IN THE JUSTICE COURT OF LAKE COUNTY, STATE OF MONTANA,
BEFORE THE HONORABLE CHUCK WALL**

STATE OF MONTANA,

Plaintiff,

-VS-

DUSTIN JADE MORGAN,

Defendant.

Case No: CR-10-34

NOTICE OF APPEARANCE

**TO THE CLERK OF THE ABOVE ENTITLED COURT and MITCHELL
YOUNG, Lake County Attorney.**

PLEASE TAKE NOTICE that Nicole Ducheneaux, Attorney at Law hereby enters her
appearance as attorney for the Defendant, Dustin Jade Morgan.

DATED this 4 day of March 2010.

Office of the State Public Defender


Nicole Ducheneaux, Attorney for Defendant

NOTICE OF APPEARANCE
State of Montana v. Dustin Morgan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4 day of March 2010, a true and correct copy of the foregoing document was served on the following individual(s) by mail, hand-delivery, Federal Express or facsimile as indicated below.

Mitchell Young
Lake County Attorney
106 4th Ave. E.
Polson, MT 59860

☐ U.S. Mail
☒ Hand Delivery
☐ Federal Express
☐ Facsimile



Office of the State Public Defender

APPOINTMENT OF STATE PUBLIC DEFENDER

Court Name: Lake County Justice Court

I hereby appoint the Office of the State Public Defender to represent:

Defendant Name: Dustin Jade Morgan

Case Number: CR-2010-0000034

Charges: Written Waiver of Extradition Proceedings -

Hearing Date: Appearance in District Court to be determined.

Defendant IS in custody in the Lake County Jail.

Defendant's Address and Phone number is:

11328 Whispering Cliff Pocatello ID 83201

(208) 705-7019 (h) (w)

Dated this 1st day of March, 2010.

Judge's Name: Chuck Wall

For Regional Office Use Only

Assigned Attorney _____ FTE _____ Contracted _____ Conflict _____

Regional Authorization _____ Date _____

Assigned OPD# _____ Entered SABHRS _____

If this is a conflict case, fax or email this form to Eric Olson, Conflict Manager,
(ecolson@mt.gov, 523-5141) and identify, if known, cases in conflict with this one:

Defendant _____ Attorney _____ OPD# _____
Defendant _____ Attorney _____ OPD# _____

Form No: 0001
Effective: 7/1/06
Office of State Public Defender

1 Chuck Wall
2 Justice of the Peace
3 Lake County Courthouse
4 106 Fourth Avenue East
5 Polson, MT 59860-2171
6 Telephone: (406) 883-7258

FEB 26 2010 12:33

8 IN THE JUSTICE COURT OF LAKE COUNTY, MONTANA

9 THE STATE OF MONTANA,

10 Plaintiff,

11 VS.

12 DUSTIN MORGAN,

13 Defendant.

CAUSE NO. CR-10-034

WARRANT

14 * * * * *

15 WHEREAS this Court has examined the warrant for the
16 Defendant issued by the State of Idaho, and it appears that the
17 Defendant is the person who is charged with ELUDING, a Felony,
18 Count I, in violation of Idaho Code Section 49-1404(2)(1), and
19 DRIVING WITHOUT PRIVILEGES, a Misdemeanor, Count II, in
20 violation of Idaho Code Section 18-8001(5).

21 IT IS ORDERED that the Defendant is committed to the
22 Lake County Jail for a period of thirty (30) days from February
23 26, 2010, through and including March 28, 2010, to enable the
24 arrest of the accused to be made upon a warrant of the governor

25 WARRANT

Page 1

1 on a requisition of the executive authority of the State of
2 Idaho as set forth in MCA 46-30-302.

3 Bail is hereby set in the amount of \$ 10,000.00.

4 DATED this 26th day of February, 2010.

5
6 /S/ CHUCK WALL
7 JUSTICE OF THE PEACE
8 Chuck Wall, Presiding
9

10 2/26/10 1510 hrs @ Lcso Jail

11
12
13 *Chuck Wall* 15-3
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25 WARRANT

Page 2

LAKE COUNTY ATTORNEY'S OFFICE
Lake County Courthouse
106 Fourth Avenue East
Polson, Montana 59860-2183
Telephone: (406) 883-7245
Fax: (406) 883-7346

FEB 26 2010 PM 12:33

IN THE JUSTICE COURT OF LAKE COUNTY, MONTANA

THE STATE OF MONTANA,

Plaintiff,

vs.

DUSTIN MORGAN,

Defendant.

CAUSE NO. CR-10-034

COMPLAINT AND AFFIDAVIT
UNIFORM CRIMINAL
EXTRADITION ACT

* * * * *

JESSICA COLE-HODGKINSON, Deputy Lake County Attorney,
pursuant to MCA 46-30-228 and related statutes in title 46,
Chapter 30, Part 2, being duly sworn, deposes and says:

1. That the Defendant has been charged with
ELUDING, a Felony, Count I, in violation of Idaho Code Section
49-1404(2)(1), and DRIVING WITHOUT PRIVILEGES, a Misdemeanor,
Count II, in violation of Idaho Code Section 18-8001(5), in the
Fifth Judicial District Court, State of Idaho, County of
Minidoka.

///

AMENDED COMPLAINT AND AFFIDAVIT UNIFORM CRIMINAL EXTRADITION ACT Page 1

1 2. That a warrant for the arrest of the Defendant
2 has been issued by the Fifth Judicial District Court, of the
3 State of Idaho, for the County of Minidoka.

4 3. That the Defendant is currently to be found in
5 the Lake County Jail pursuant to this warrant.

6 4. That the State of Idaho requests a bond in the
7 amount of \$10,000.00.

8 DATED this 26th day of February, 2010.

9
10 
11 JESSICA COLE-HODGKINSON
Deputy Lake County Attorney

12 STATE OF MONTANA)
13) ss.
County of Lake)

14 On this 26th day of February, 2010, before me, a Notary
15 Public for the State of Montana, personally appeared JESSICA
16 COLE-HODGKINSON known to me to be the person whose name is
17 subscribed to the foregoing Affidavit and acknowledged to me
18 that she has read the foregoing Affidavit and knows the contents
19 thereof to be true and correct to the best of her belief.

20 SUBSCRIBED AND SWORN to before me this 26th day of
21 February, 2010.

22 
JESSICA ALLRED



JESSICA ALLRED
NOTARY PUBLIC for the
State of Montana
Residing at Polson, Montana
My Commission Expires
October 14, 2013

COPY

WARRANT OF ARREST

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY
MAGISTRATE DIVISION**

STATE OF IDAHO)
County of Minidoka)

) ss.

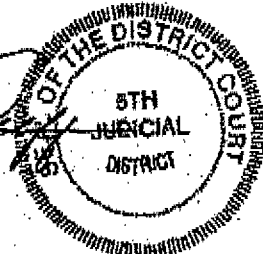
CR-2010-550

TO ANY SHERIFF, CONSTABLE, MARSHALL, OR POLICEMAN OF SAID STATE:

A Complaint on oath, having been laid before me by Dave Plutner and there appearing that there is probable cause to believe that a felony, namely, the crime(s) of **FELONY ELUDING**, in violation of Idaho Code Section 49-1404(2)(1), and a misdemeanor, **DRIVING WITHOUT PRIVILEGES**, in violation of Idaho Code Section 18-8001(5), has been committed within the County of Minidoka, State of Idaho, and accusing Dustin Morgan thereof, you are therefore commanded forthwith to arrest the above named Dustin Morgan of Lake County Jail, 106 4th Ave. E., Polson, Montana, [REDACTED] either in day or nighttime, and bring him before me, at my office in the Minidoka County Judicial Building at the City of Rupert, County of Minidoka, State of Idaho, or in case of my absence or inability to act, before the nearest or most accessible Magistrate in said County of Minidoka, State of Idaho.

Witness my hand and seal of said court, at the City of Rupert, County of Minidoka, State of Idaho, this 23 day of February, 2010.

Magistrate Judge



BAIL: 10,000

Robt R Jg 2-26-10
0812 hrs

DC-10-56

DC-10-57

DC-10-12

State of Montana, Plaintiff

-vs-

Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition in DC-10-56 and DC-10-57 and sentencing in DC-10-12. Defendant present with counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Cole-Hodgkinson indicates that the Defendant is willing to waive extradition and the State does have a governor's warrant so at this time the State moves to dismiss the extraditions. No objection by the Defendant. DC-10-56 and DC-10-57 are dismissed.

PSI has been received and reviewed. No additions or corrections. For the offense of CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE, a Felony, Count II the Court commits the Defendant to the DOC for a term of 15 years with 10 years suspended, for the offense of TAMPERING WITH EVIDENCE, a Felony, Count III the Court commits the Defendant to the DOC for a term of 15 years with 10 years suspended to run concurrent with Count II.

All conditions of probation, fines and surcharges in the Plea agreement and all conditions by the probation office are incorporated by reference.

Done this 20th day of May, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr. cc

cc: County Attorney
Nicole Ducheneaux
Sheriff
Probation

-4-

DC-10-56

DC-10-57

State of Montana, Plaintiff

-vs-

Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition. Defendant present with substitution counsel Caroline Riss for counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Cole-Hodgkinson indicates that the parties have agreed to continue these matters until after the Defendant is sentenced in DC-10-12.

These matters are continued to Thursday, May 20, 2010 at 9:00 a.m.

Done this 15th day of April, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr: cc

cc: County Attorney

Nicole Ducheneaux

Sheriff

DC-10-56

DC-10-57

State of Montana, Plaintiff

-vs-

Dustin Morgan, Defendant

MINUTE ENTRY

This matter came before the Court for extradition. Defendant present with substitution counsel Caroline Riss for counsel Nicole Ducheneaux; State represented by Jessica Cole-Hodgkinson, Deputy County Attorney.

Ms Riss is requesting a continuance of one (1) week to allow Ms Ducheneaux the opportunity to discuss these matters with the Defendant. No objection by the State. Request granted.

These matters are continued to Thursday, April 15, 2010 at 9:00 a.m.

Done this 8th day of April, 2010 with the Honorable Deborah Kim Christopher presiding.

Lyn Fricker
Clerk District Court
By: Mary Asper, Deputy
Cr: cc

cc: County Attorney
Nicole Ducheneaux
Sheriff

THE LAKE COUNTY JUSTICE COURT, STATE OF MONTANA
IN AND FOR THE COUNTY OF LAKE COUNTY
BEFORE THE HONORABLE CHUCK WALL

CLERK OF
DISTRICT COURT
LYN FRICKER

STATE OF MONTANA

Case No. CR 2010-000083 9: 58

Plaintiff,

VS.

DUSTIN LADE MORGAN

Defendant.

INITIAL APPEARANCE
FILED
CLERK/DEPUTY

DOB:
DL Number:
DL State:
Telephone:

Height: 602
Weight: 165
SSN:
Tribal Member:

Citing Agency: County Attorney Citing Officer:

J. Cory Allen CA 5

☐ Defendant present without attorney.

☒ Defendant present with attorney:

☒ State represented by:

Offense Defendant Charged: 46-30-228

Extradition

Maximum Penalty: The State of Idaho requests a bond in the amount of \$10,000. The State of Montana Requests the bond be in the amount of \$10,000.

[May include enhancement for subsequent conviction for the same or similar offense, court costs, costs of public defender, costs of confinement and surcharges.]

DEFENDANT'S RIGHTS

Defendant advised of the following rights:

1. Right to be represented by an attorney at every stage of the proceedings.
2. Right to appointment of an attorney if the Defendant is unable to employ an attorney (if the Court retains imprisonment as a sentencing option).
3. Right to remain silent and that any statement may be used against the Defendant in any court.
4. Right to a judicial determination of probable cause.
5. Right to bail as provided by law.
6. That if the Defendant is not a U.S. citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the U.S. or denial of naturalization under federal law.

ATTORNEY:

- ☒ Appointed
☐ Not appointed/To be retained
☐ Retained and present / not present / notice of appearance filed

BAIL:

\$ 10,000.00

DEFENDANT IS ORDERED:

- ☐ No possession and/or consumption of alcohol or non-Rx drugs / No going into bars / Submit to blood, breath analysis, or urine test upon request of officer with probable cause.
☐ No contact with alleged victim(s) named in the complaint
☒ Attend all scheduled Court dates in person unless otherwise notified by attorney
☒ Obey all laws
☒ Keep in contact with attorney / Notify Court of attorney within 20 days
☒ Other: Report to SR Judicial District Court, Idaho within 7 days of release

ORDERED THIS

22

day of

2010

Defendant

Chuck Wall, Justice of the Peace

1 HON. CHUCK WALL
2 Lake County Justice Court
3 Lake County Courthouse
4 106 Fourth Avenue E
5 Polson, MT 59860
6 (406) 883-7360

COPIES
SENT

LAKE COUNTY JUSTICE COURT
CHUCK WALL, JUSTICE OF THE PEACE

7 STATE OF MONTANA,

Cause No. CR-10-13

8 Plaintiff,

9 vs.

ORDER FOR RELEASE

10 DUSTIN JADE MORGAN,

11 Defendant.

12 IT IS HEREBY ORDERED that Defendant is released from custody in the above
13 referenced matter. The State's Motion for Extension was filed at 5:00 p.m. on the last day of
14 Defendant's legal incarceration on this Court's previous warrant and was not served upon counsel
15 for Defendant, therefore Defendant had no ability to contest the State's Motion.
16

17 SO ORDERED this 23rd day of February, 2010.

18 
Chuck Wall, Justice of the Peace

19
20 Cc: Plaintiff
21 Office of Public Defender
22
23
24
25
26

1 LAKE COUNTY ATTORNEY'S OFFICE
2 Lake County Courthouse
3 106 Fourth Avenue East
4 Polson, Montana 59860-2183
5 Telephone: (406) 883-7245
6 Fax: (406) 883-7346

FEB 19 2010 PM 3:00

7 IN THE JUSTICE COURT OF LAKE COUNTY, MONTANA

8 THE STATE OF MONTANA,

9 Plaintiff,

10 vs.

11 DUSTIN JADE MORGAN,

12 Defendant.

13 CAUSE NO. CR-10-13

14 MOTION FOR EXTENSION

15 * * * * *

16 COMES NOW, J CORY ALLEN, Deputy Lake County Attorney,
17 and pursuant to MCA 46-30-304, moves this Court for its order
18 recommitting the Defendant herein for a further period of 60
19 days through and including April 20, 2010.


20 This Motion is made on the basis that the original per-
21 iod of 30 days commitment pursuant to MCA 46-30-302 expires
22 February 19, 2010. The State of Idaho is in the process of
23

24 MOTION FOR EXTENSION

Page 1


1 obtaining a governor's warrant.

2 DATED this 19th day of February, 2010.

3
4 
5 J. CORY ALLEN
6 Deputy Lake County Attorney

7
8
9 CERTIFICATE OF SERVICE

10 I hereby certify that on February 19, 2010, a true
11 and correct copy of the foregoing document was placed in the OPD
12 box located in the County Attorney's office and faxed to
13 Minidoka County Sheriff, Idaho, at 208-436-9561.

14 
15 MARILYN COOPER, Legal Secretary
16 Lake County Attorney's Office

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25 MOTION FOR EXTENSION

Page 2

1 Chuck Wall
2 Justice of the Peace
3 Lake County Courthouse
4 106 Fourth Avenue East
5 Polson, MT 59860-2171

6
7 IN THE JUSTICE COURT OF LAKE COUNTY, MONTANA

8 THE STATE OF MONTANA, *

9 Plaintiff, *

CAUSE NO. CR-10-13

10 vs. *

EXTENSION WARRANT

11 DUSTIN JADE MORGAN, *

12 Defendant. *

13 * * * * *

14
15 WHEREAS this Court has examined the Motion for Exten-
16 sion stating that a governor's warrant has been requested by the
17 State of Idaho and it appears that the Defendant is the person
18 who violated the conditions of his probation to the Idaho
19 Department of Corrections in the State of Idaho, County of
20 Minidoka.
21

22 IT IS HEREBY ORDERED that the Defendant is committed to
23 the Lake County Jail for an additional period of 60 days through
24

25 EXTENSION WARRANT

Page 1

1 and including April 20, 2010, to enable the arrest of the
2 accused to be made upon a warrant of the governor on a
3 requisition of the executive authority of the State of Idaho, as
4 set forth in MCA 46-30-304.
5

6 - Bail is hereby continued in the amount of \$10,000.

7 DATED this _____ day of February, 2010
8

9 /S/ CHUCK WALL
10 JUSTICE OF THE PEACE
11 Chuck Wall, Presiding
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25 EXTENSION WARRANT

Page 2

1 and including April 20, 2010, to enable the arrest of the
2 accused to be made upon a warrant of the governor on a
3 requisition of the executive authority of the State of Idaho, as
4 set forth in MCA 46-30-304.

5
6 Bail is hereby continued in the amount of \$10,000.

7 DATED this _____ day of February, 2010

8
9 /S/ CHUCK WALL

10 JUSTICE OF THE PEACE
11 Chuck Wall, Presiding
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25 EXTENSION WARRANT

Page 2

Nicole Ducheneaux
Office of the State Public Defender
110 Main Street, Suite 11
P.O. Box 1150
Polson, MT 59860
Telephone: (406) 883-6080
Facsimile: (406) 883-6089

Attorney for Defendant

**IN THE JUSTICE COURT OF LAKE COUNTY, STATE OF MONTANA,
BEFORE THE HONORABLE CHUCK WALL**

STATE OF MONTANA,

Plaintiff,

-vs-

DUSTIN JADE MORGAN,

Defendant.

Case No: CR-10-013

NOTICE OF APPEARANCE

TO THE CLERK OF THE ABOVE ENTITLED COURT and CORY ALLEN,

Deputy Lake County Attorney.

PLEASE TAKE NOTICE that Nicole Ducheneaux, Attorney at Law hereby enters her
appearance as attorney for the Defendant, Dustin Jade Morgan.

DATED this 27 day of January 2010.

Office of the State Public Defender

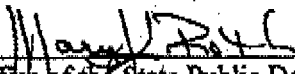

Nicole Ducheneaux, Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of January 2010, a true and correct copy of the foregoing document was served on the following individual(s) by mail, hand-delivery, Federal Express or facsimile as indicated below.

Cory Allen
Deputy Lake County Attorney
106 4th Ave. E.
Polson, MT 59860

☐ U.S. Mail
☒ Hand Delivery
☐ Federal Express
☐ Facsimile



Office of the State Public Defender

APPOINTMENT OF STATE PUBLIC DEFENDER

Court Name: Lake County Justice Court

I hereby appoint the Office of the State Public Defender to represent:

Defendant Name: Dustin Jade Morgan

Case Number: CR-2010-0000013

Charges: Extradition -

Hearing Date: Appearance in District Court to be determined.

Defendant is in custody in the Lake County Jail.

Defendant's Address and Phone number is:

11328 Whispering Cliff Pocatello ID 83201

(208) 705-7019 (h) (w)

Dated this 25th day of January, 2010.

Judge's Name: Chuck Wall

For Regional Office Use Only

Assigned Attorney _____ FTE _____ Contracted _____ Conflict _____

Regional Authorization _____ Date _____

Assigned OPD# _____ Entered SABHRS _____

If this is a conflict case, fax or email this form to Eric Olson, Conflict Manager,
(ecolson@mt.gov, 523-5141) and identify, if known, cases in conflict with this one:

Defendant _____ Attorney _____ OPD# _____

Defendant _____ Attorney _____ OPD# _____

Form No: 0001
Effective: 7/1/06
Office of State Public Defender

1 Chuck Wall
2 Justice of the Peace
3 Lake County Courthouse
4 106 Fourth Avenue East
5 Polson, MT 59860-2171
6 Telephone: (406) 883-7258

7 IN THE JUSTICE COURT OF LAKE COUNTY, MONTANA

8 THE STATE OF MONTANA,

9 Plaintiff,

10 vs.

11 DUSTIN MORGAN,

12 Defendant.

13 CAUSE NO. CR-10-13

14 WARRANT

15 * * * * *

16 WHEREAS this Court has examined the warrant for the
17 Defendant issued by the State of Idaho, and it appears that the
18 Defendant is the person who is charged with Felony Eluding, in
19 violation of Idaho Code Section 49-1404(2)(a) and Driving
20 Without Privileges, a Misdemeanor, in violation of Idaho Code
21 Section 18-8001(5).

22 IT IS ORDERED that the Defendant is committed to the
23 Lake County Jail for a period of thirty (30) days from January
24


25 WARRANT

Page 1

1 21, 2010, through and including February 20, 2010, to enable the
2 arrest of the accused to be made upon a warrant of the governor
3 on a requisition of the executive authority of the State of
4 Idaho as set forth in MCA 46-30-302.

5 Bail is hereby set in the amount of \$ 10,000.00

6 DATED this 22 day of January, 2010.

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10 JUSTICE OF THE PEACE
11 Chuck Wall, Presiding
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WARRANT

Page 2

1 LAKE COUNTY ATTORNEY'S OFFICE
2 Lake County Courthouse
3 106 Fourth Avenue East
4 Polson, Montana 59860-2183
Telephone: (406) 883-7245
Fax: (406) 883-7346

5 IN THE JUSTICE COURT OF LAKE COUNTY, MONTANA

6 THE STATE OF MONTANA,

7 Plaintiff,

8 vs.

9 DUSTIN MORGAN,

10 Defendant.

*
*
* CAUSE NO. CR-10-13
*

* COMPLAINT AND AFFIDAVIT
* UNIFORM CRIMINAL
* EXTRADITION ACT
*

11
12 * * * * *

13 J CORY ALLEN, Deputy Lake County Attorney, pursuant to
14 MCA 46-30-228 and related statutes in title 46, Chapter 30, Part
15 2, being duly sworn, deposes and says:

16
17 1. - * That the Defendant has been charged with the
18 offenses of Felony Eluding, in violation of Idaho Code Section
19 49-1404(2)(a) and Driving Without Privileges, a Misdemeanor, in
20 violation of Idaho Code Section 18-8001(5) within the State of
21 Idaho, County of Minidoka.

22 2. That a warrant for the arrest of the Defendant
23 has been issued by the District Court of the Fifth Judicial
24

25 COMPLAINT AND AFFIDAVIT UNIFORM CRIMINAL EXTRADITION ACT

Page 1


1 District of the State of Idaho, in and for the County of
2 Minidoka.

3 3. That the Defendant is currently to be found in
4 the Lake County Jail pursuant to this warrant.

5 4. That the State of Idaho requests a bond in the
6 amount of \$10,000.

7 5. The State requests bond be set in the amount of
8 \$10,000, on the grounds that the State feels the Defendant is a
9 flight risk.
10


11 DATED this 21st day of January, 2010.

12
13 
14 J CORY ALLEN
Deputy Lake County Attorney

15 STATE OF MONTANA)
16) ss.
County of Lake)

17 On this 21 day of January, 2010, before me, a Notary
18 Public for the State of Montana, personally appeared J CORY
19 ALLEN known to me to be the person whose name is subscribed to
20 the foregoing Affidavit and acknowledged to me that he has read
the foregoing Affidavit and knows the contents thereof to be
true and correct to the best of his belief.

21 SUBSCRIBED AND SWORN to before me this 21 day of
22 January, 2010.

23
24 
25 NOTARY PUBLIC for the
State of Montana
Residing at Polson, Montana
My Commission Expires
August 16, 2010

COMPLAINT AND AFFIDAVIT UNIFORM CRIMINAL EXTRADITION ACT Page 2

ORIGINAL
WARRANT OF ARREST

MINIDOKA COUNTY
SHERIFF
Received JAN 12 2010
Served By _____
Date _____
Time _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY

MAGISTRATE DIVISION

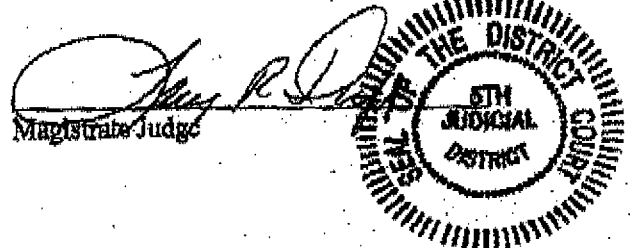
STATE OF IDAHO)
County of Minidoka) ss.

CR-2010-81

TO ANY SHERIFF, CONSTABLE, MARSHALL, OR POLICEMAN OF SAID STATE:

A Complaint on oath, having been laid before me by Trooper Aaron Bingham and there appearing that there is probable cause to believe that a felony, namely, the crime(s) of **FELONY ELUDING**, in violation of Idaho Code Section 49-1404(2)(a), and a misdemeanor, **DRIVING WITHOUT PRIVILEGES**, in violation of Idaho Code Section 18-8901(5), has been committed within the County of Minidoka, State of Idaho, and accusing Dustin Morgan thereof, you are therefore commanded forthwith to arrest the above named Dustin Morgan of 11328 Whispering Ck, Pocatello, ID, d.o.b. 03-10-1986, ss # 519-31-1706, either in day or nighttime, and bring him before me, at my office in the Minidoka County Judicial Building at the City of Rupert, County of Minidoka, State of Idaho, or in case of my absence or inability to act, before the nearest or most accessible Magistrate in said County of Minidoka, State of Idaho.

Witness my hand and seal of said court, at the City of Rupert, County of Minidoka, State of Idaho, this 11 day of January, 2010.



BAIL: \$10,000⁰⁰

Arrested in Charle, MT,
at 15:50 hrs 01/20/10

PJCR 15-13 Lake Co., MT Sheriff's Office
Pet O'Connor

COURT MINUTES

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Status

Hearing date: 9/14/2015

Time: 9:33 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is not present

Court calls case, confirms in custody in Montana, inquires how wish to proceed on motion

Mr. Jensen has a waiver from defendant re: willing to waive presence for this motion hearing

Court notes is defense motion, will start with defense

9:34 a.m. Mr. Jensen makes argument in support of motion to dismiss, cites considerations, cites to I.C. 19-3501 (1), continues argument, cite to Montana code #46-3301 which mirrors Idaho code 19-4514, continues argument, Mr. Morgan was detained by Court's in Montana and bond set at \$10,000, 19-3501 kicked in by that point and state had 6 months at that time to file and information or indictment which did not, concludes comments, asks court to grant motion and dismiss based upon state's failure to file

Court questions Mr. Jensen re: review of additional Montana documents, minutes there show that he agreed to waive extradition, and do not see any efforts of defendant to ask for speedy resolution either, comments further

Mr. Jensen responds, not sure if defendant was aware of need to request speedy resolution, comments further

Court responds further

Mr. Jensen responds, still hold to position that was arrested and that it kicked in

9:41 a.m. Mr. Stevenson makes state's argument in opposition to defendant's motion to dismiss, no written document that indicated that defendant ever waived extradition, cites further considerations in opposition

9:43 a.m. Court questions state regarding comments

Mr. Stevenson responds, cites to Governor's warrant process, still a fugitive until in the State of Idaho and served with our arrest warrant, was fugitive until 5-18-15 when picked up in Bannock county and served with our arrest warrant, cites to *State V _____* @ 157I410, in all cases which court cites to the arrest warrant was served and then defendant went to another state and served time and then brought back so entitled to credit time served, state would rest on objection filed

9:46 a.m. Mr. Jensen rebuttal argument in support of motion to dismiss, leave to Court's discretion, nothing further today

Court takes motion under advisement, comments re: Court's thought process on matter,

Mr. Stevenson notes defendant was released in Montana recently so not in custody at this time

Court responds

9:48 a.m. recess

record, the Court heard oral argument on, and took under advisement, Defendant's Motion to Dismiss.

On December 1, 2009, an Idaho State Police Officer pursued a vehicle that successfully eluded officers. The State alleges that Dustin Morgan, the Defendant, was driving the vehicle. On January 11, 2010, the State filed a criminal complaint against the Defendant in case number CR-2010-81 and the Court issued an arrest warrant. Before the Idaho warrant was served, Defendant was taken into custody in Lake County, Montana on January 21, 2010. The State sent the Montana Department of Corrections a copy of the arrest warrant. The State dismissed the Idaho case on February 23, 2010.

On February 24, 2010, the Court opened case number CR-2010-550 when the State filed a second criminal complaint against the Defendant charging Felony Eluding and Driving without Privileges, the same charges in the previously dismissed case. Another warrant was issued and bond set at \$10,000. A new Idaho warrant was issued in case number CR-2010-550 and was received by Montana on February 26, 2010. On March 4, 2010, the Governor of the State of Idaho issued an application for requisition ("Governor's Warrant") to Montana, to detain the Defendant on the Idaho charges. On April 9, 2010, the Montana Department of Corrections and the Defendant received the Governor's warrant.

On May 20, 2010, Defendant was sentenced to fifteen years with ten years suspended in Montana on charges unrelated to the Idaho charges. At the hearing, the Defendant indicated a willingness to waive extradition. The fugitive case in Montana was dismissed in light of Defendant's willingness to waive extradition.

Defendant was released from the Montana Department of Corrections on May 12, 2015. The Lake County Jail in Montana faxed a parole violation to Bannock County Jail shortly after.

On May 18, 2015, Defendant was arrested on a warrant in this criminal case (CR-2010-550) in Bannock County, Idaho and was subsequently transferred to the Mini-Cassia Criminal Justice Center. The State filed the Information in this case on July 24, 2015, containing the Felony Eluding and Driving Without Privileges charges contained in the criminal complaint (filed February 24, 2010).

ANALYSIS AND DISCUSSION

The Defendant filed the motion to dismiss based on the right to a speedy trial and the failure of the state to prosecute within the six (6) month statutory prescribed period. IDAHO CODE § 19-3501. However, the Defendant was a fugitive which tolls the statutory time and the Interstate Detainer Agreement adjusts prosecution timeline requirements based on the custody of a defendant in another state before the resolution of a pending case. The Idaho statutory detainer agreement has a described purpose that states:

it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition if such charges and determination of the proper status of any and all detainees based on untried indictments, informations, and complaints.

IDAHO CODE § 19-5001(a). Under the statute, the detainer agreement can be invoked by either the defendant or the state prosecutor where there is any untried complaint or information. *State v. Moliga*, 113 Idaho 672, 674 (Ct. App. 1987).

Importantly, the term detainer is not defined within the statute; therefore, determining when to apply the detainer agreement requires an analysis of outside law. The detainer agreement, although codified in the Idaho Code, is an agreement that falls within the Compact Clause of the United States constitution and is governed by federal law and construction. U.S. CONST., Art. I, § 10, cl. 3; *State v. Bronkema*, 109 Idaho 211, 214 (Ct. App. 1985), citing *Carchamn v. Nash*, 473 U.S. 716 (1985).

The United States Supreme Court has provided a definition for detainer; a detainer is:

a request filed by a criminal justice agency with the institution in which the prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.

Carchman, 437 U.S. at 719, quoting COUNCIL OF STATE GOV'TS SUGGESTED STATE LEGISLATION, PROGRAM FOR 1957, at 74 (1956). The Supreme Court also determined that a detainer may be a "warrant filed against a person already in custody with the purpose of insuring that he will be available to the authority which has placed the detainer." *Id.* at 727. Accordingly, the Idaho Supreme Court applied the U.S. Supreme Court holding and interpreted the definition of detainer under Idaho Code § 19-5001 as a written communication sent by the state with pending litigation that is filed with the custodial state requesting that the custodial state either (1) provide notification of when the prisoner will be released, or (2) hold the prisoner for the requesting state. *State v. Bronkema*, 109 Idaho 211, 214 (1985).

The Interstate Detainers Act prescribes alternative timeframes for prosecution depending on whether the State or defendant requests action on the pending charges. The State initiates the detainer agreement when the prosecutor files with the custodial state a written request for temporary custody of the prisoner. *State v. Moliga*, 113 Idaho 672, 675 (Ct. App. 1987). The filing state must then commence trial within 120 days of the prisoner entering the state. IDAHO CODE § 19-5001(d)(3). If the State fails to meet the time requirements, then the case against the defendant should be dismissed. Alternatively, the defendant may initiate proceedings to resolve any pending litigation in a non-custodial state. *Moliga*, 113 Idaho at 675. To do so, a defendant must request disposition of any pending charges within 180 days after notice of the untired matter is delivered to the place of imprisonment. *Id.*; IDAHO CODE § 19-5001(c)(1).

Importantly, there is no evidence that the Defendant actively pursued a means to initiate the resolution of the charges pending in Idaho while incarcerated in Montana. Defendant failed to initiate proceedings despite the evidence of receipt of both the arrest warrant in the case and the Governor's Warrant. The Defendant's decision to refrain from action during the prescribed time under the Interstate Detainers Act (180 days) means that no time limits under the act apply at this point.

Although nothing in the Interstate Detainers Act prevents prosecution here, the prior dismissal of the misdemeanor Driving Without Privileges charge is a bar to further prosecution of that charge. The original case included the same misdemeanor charge contained in the complaint in CR-2010-550. The original case was dismissed in February 2010. Under the Idaho Code § 19-3506 and Idaho Criminal Rule 48(c), an order of dismissal for a misdemeanor has the effect of barring any prosecution for the same offense. Therefore, the State cannot pursue prosecution of the Defendant for the Driving Without Privileges charge.

Notably, the State in its response to the motion to dismiss raised the issue of how much credit the Defendant will receive for time served. The Plaintiff has not specifically addressed the issue of time served in either the motion to dismiss or the reply brief. Although this undoubtedly would be an issue at any future sentencing, the issue is not ripe for decision at this time. In the event of judgment and conviction the Court will address the parties' arguments on calculating time served.

CONCLUSION

The Defendant's Motion to Dismiss is hereby DENIED IN PART and GRANTED IN PART. The Defendant's motion is DENIED as to Count One of the Information: Felony

Eluding. The Defendant's motion is GRANTED as to Count Two of the Information: Driving Without Privileges. Therefore, the Driving Without Privileges charge is DISMISSED.

Dated: 9/30/15
Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Laurie McCall Deputy Clerk for the County of Minidoka, do hereby certify that on the 30th day of Sept, 2015, I filed the original and caused to be served a true and correct copy of the above and foregoing document: ORDER DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION TO DISMISS, to each of the persons as listed below:

Lance Stevenson
P.O. Box 368
Rupert, ID 83350

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Email

Kent D. Jensen
P.O. Box 276
Burley, ID 83318
(208) 515-3464

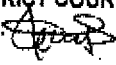
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Email

DATED 9-30-15
CLERK OF THE DISTRICT COURT

Dorey Hemple

BY: Laurie McCall
Deputy Clerk

1 Kent D. Jensen (ISB #4424)
2 JENSEN LAW OFFICE
3 101 W 18th St.
4 P.O. Box 276
5 Burley, Idaho 83318
6 Telephone: (208) 878-3366
7 Fax: (208) 515-3464
8 Attorney for Defendant

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 10/30/2015 04:58 PM
Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
6 STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

7 STATE OF IDAHO,

8 Plaintiff,

9 vs.

10 DUSTIN JADE MORGAN,

11 Defendant.

Case No. CR 2010-550

**MOTION TO CORRECT RECORD AND
RECONSIDER OR IN THE
ALTERNATIVE DEFENDANT'S
SECOND MOTION TO DISMISS**

12 COMES NOW, the Defendant, by and through his attorney of record, who does hereby
13 petition the court to correct the record and reconsider its decision on the Defendant's Motion to
14 Dismiss based upon the following information.

15
16 In the court's opinion, there are some facts which need to be corrected. The court's
17 opinion on the page 2 states that Mr. Morgan was released by the Montana Department of
18 Corrections on May 12, 2015. This information is incorrect. Mr. Morgan was actually released on
19 April 7, 2014. See Exhibit A. Mr. Morgan was given a permit to travel to the state of Idaho by
20 the state of Montana which indicated that he would be leaving on April 7, 2014. See Exhibit B.
21 By June of 2014, Mr. Morgan was working for American Falls City. See Exhibit C. In July of
22 2014, Mr. Morgan applied for entrance into the tech program at Idaho State University. See
23 Exhibit D. These facts are important with regard to consideration of the court's interpretation of
24 Idaho Code § 19-5001.
25
26

27
28 The court in denying Mr. Morgan's Motion to Dismiss relies upon those provisions found
29 within Idaho Code § 19-5001 and makes reference to Mr. Morgan's failure to abide by those
30

MOTION TO CORRECT RECORD AND DISMISS -1-

provisions, thus holding that Mr. Morgan's Motion should be denied. However, the court's reliance upon Idaho Code § 19-5001 is misplaced. Idaho Code § 19-5001 applies to detainers issued by the Idaho Department of Corrections and directed towards another state's similarly situated director to detain a prisoner being held in the other state. The Defendant's reading of this statute is in contravention of that set out by the court. Idaho Code § 19-5001 clearly lays the burden upon the state to initiate proceedings and the issuance of a detainer against the defendant. The Defendant's obligations under the state only come into existence upon service of the detainer and his advisement of rights by the proper authority.

The state did not follow the proper procedures set out in Idaho Code § 19-5001 and thus Mr. Morgan's speedy trial rights were violated pursuant to Idaho Code § 19-3501. Additionally because the statutory scheme of Idaho Code § 19-5001 clearly states that it is written to protect said rights, the state cannot rely upon the tolling provisions of Idaho Code § 19-404. Consequently, the actions of the state are a violation of the Defendants' due process rights as set forth in the Fifth and Fourteenth Amendments, as well as similar guarantees found in the Idaho Constitution.

Therefore, the Defendant petitions the court to re-examine the facts and law and grant the Defendant's motion to dismiss.

DATED this 30th day of October, 2015.


Kent D. Jensen
Attorney for Defendant

MOTION TO CORRECT RECORD AND DISMISS -2-

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2015, I served the foregoing Motion to Dismiss upon the attorney for Idaho by e-mail, addressed as follows:


Minidoka County Prosecutor

cdraep@co.minidoka.id.us


Kent D. Jensen

MOTION TO CORRECT RECORD AND DISMISS -3-

Kent D. Jensen (ISB #4424)
JENSEN LAW OFFICE
101 W 18th St.
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 878-3366
Fax: (208) 515-3464
Attorney for Defendant

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 10/30/2015 04:58 PM
Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Case No. CR 2010-550

Plaintiff,

vs.

DUSTIN JADE MORGAN,

**MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER OR IN THE
ALTERNATIVE SECOND MOTION TO
DISMISS**

Defendant.

The court in its Order denying the Defendant's Motion to Dismiss states on page 5 of the decision that Mr. Morgan failed to initiate the required proceedings of Idaho Code § 19-5001. The court stated that Mr. Morgan did nothing in spite of being aware of the arrest warrant and the governor's warrant in this case. According to the court the Mr. Morgan's indecision invoked the 180 day time limit and therefore, because he did nothing, there is no violation of speedy trial rights which would trigger dismissal pursuant to the statute of limitations in this matter. Mr. Morgan argues that this analysis is incorrect. The governor's warrant of extradition and the detainers set forth in Idaho Code § 19-5001 are two different creatures. Each involves a different statutory scheme and due process requirements.

With regard to the policy of the statute, it states as follows:

(a) The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and *difficulties in securing speedy trial of persons already incarcerated in other jurisdictions*, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all

**MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER -1-**

1 detainers based on untried indictments, informations or complaints. The party states also
2 find that proceedings with reference to such charges and detainers, when emanating from
3 another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is
4 the further purpose of this agreement to provide such cooperative procedures. Idaho
5 Code § 19-5001(a) (Emphasis added).

6 In other words, the statute is designed to allow for the expeditious exchange of individuals who
7 are being detained in jails and prisons within the respective states. The statute has nothing to do
8 with extradition, and refers to a process of detainers which are used to hold individuals who are
9 serving time in another state and allowing for their detention and transfer to another state where
10 there is an outstanding case in which that individual is involved.

11 The statute outlines a specific procedure which must be followed in order for the detainer
12 to be put in place. Idaho Code § 19-5001(d)(1) states as follows with respect to a petition for a
13 detainer:
14

15 The appropriate officer of the jurisdiction in which an untried indictment, information or
16 complaint is pending shall be entitled to have a prisoner against whom he has lodged a
17 detainer and who is serving a term of imprisonment in any party state made available in
18 accordance with subsection (e) (1) of this section upon presentation of a written request
19 for temporary custody or availability to the appropriate authorities of the state in which
20 the prisoner is incarcerated; provided that the court having jurisdiction of such
21 indictment, information or complaint shall have duly approved, recorded and transmitted
22 the request; and provided further that there shall be a period of thirty (30) days after
23 receipt by the appropriate authorities before the request be honored, within which period
24 the governor of the sending state may disapprove the request for temporary custody or
25 availability, either upon his own motion or upon motion of the prisoner.

26 The state receiving the request then must supply a certificate which states "the term of
27 commitment under which the prisoners being held, the time already served, the time remaining to
28 be served on the sentence, the amount of good time earned, the time of parole eligibility of the
29 prisoner, and any decisions of the state parole agency relating to the prisoner." Idaho Code § 19-
30

**MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER -2-**

5001(d)(2). If other detainers from other states have been lodged, then the receiving state must also be advised of those additional detainers. *Id.*

Once the detainer has been received, then the "warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for a final disposition of the indictment, information or complaint on which the detainer is based." Idaho Code § 19-5001(c)(3). It is after the prisoner has been informed of the detainer, that the 180 day period in which the prisoner must advise the warden or Commissioner of his intent to seek trial on the matter becomes effective.

In this particular case, there is no evidence that the state of Idaho requested such a detainer on Mr. Morgan from the state of Montana. In fact it is quite clear that no such detainer existed, as the state of Montana released Mr. Morgan on parole and there is no mention within the parole documents that Mr. Morgan was subject to any detainer from the state of Idaho. Consequently, the court's reliance upon the 180 day period is entirely misplaced.

Clearly, the statute, in order to satisfy any due process concerns, requires that Mr. Morgan be informed of the detainer and his right to request a hearing. Since no detainer existed, there was no notice given to Mr. Morgan on his right to submit a request for a hearing within 180 days. In other words, there is a complete lack of evidence that any of the strictures of the statute were followed at all.

The crux of this issue is that the "detainer" discussed in Idaho Code §19-5001 is a specific creature created by statute. This type of "detainer" allows for the corrections departments of the various states to make requests to their sister states to detain individuals in the prisons of

**MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER -3-**

1 said states so that those individuals can be transferred to the requesting State under the
2 procedures set out in the statute.¹ This is an entirely different statutory creature than that created
3 by Idaho Code § 19-4501 *et. seq.*

4 The court's reliance on *Carchamn v. Nash*, 473 U.S. 716 (1985) to support the argument
5 that a governor's warrant is the same as a detainer is also misplaced. According to facts of that
6 case, it deals specifically with the type of detainer outlined in Idaho Code § 19-5001. The
7 question before the court was not to define the between governor's warrants and detainers, it was
8 to determine whether under the Interstate Compact on Detainers a probation violation was
9 subject to the 180 day period for bringing an individual to trial.
10
11

12 In fact, United States Supreme Court's interpretation of the detainer statutes squares with
13 that put forth by Mr. Morgan in this memorandum. The court states that
14

15 To achieve this purpose, Art. III of the Agreement establishes a procedure by which a
16 prisoner incarcerated in one party State (the sending State) may demand the speedy
17 disposition of "any untried indictment, information or complaint on the *basis of which a*
18 *detainer has been lodged against the prisoner*" *by another party* [3404] State (the
19 receiving State). [721] Specifically, Art. III requires the warden to inform the prisoner
20 that a detainer has been lodged against him and that he may request final disposition of
21 the indictment, information, or complaint upon which the detainer is based. If the prisoner
22 makes such a request, the warden must forward it, together with a certificate providing
23 certain information about the prisoner's terms of confinement, to the appropriate
24 prosecuting official and court of the receiving State. The authorities in the receiving State
25 then must bring the prisoner to trial within [10] 180 days, absent good cause shown, or
26 the court must dismiss the indictment, information, or complaint with prejudice, and the
27 detainer will cease to be of any force or effect.²

28 ¹ Idaho Code § 19-5007 designates the director of the department of corrections as the official duly charged with
29 forwarding the requests to other states, after the appropriate judicial officer and court certifies the case and makes the
30 request for the detainer.

² *Carchman v. Nash*, 473 U.S. 716, 720-21 (1985). (emphasis added).

MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER 4-

1 The analysis of the *Carchman* case also puts into doubt the Idaho Court of Appeals interpretation
2 of the detainer statutes set out in *State v. Molilga*, 113 Idaho 672 (Ct. App. 1987). Clearly, the
3 United States Supreme Court interprets statutes such as Idaho Code § 19-5001 as containing due
4 process procedures which must be followed. The Interstate Compact on Detainers referenced by
5 the United States Supreme Court is the statutory scheme set out in Idaho Code § 19-5001. It is
6 not analogous to a governor's warrant it is a separate procedure.
7

8 Under Idaho Code §19-4501 the governor of a state to seeking a fugitive found in another
9 state issues a warrant of extradition pursuant to a very specific procedure for the return of that
10 individual, which is an entirely different process from that described in Idaho Code § 19-5001.
11 The procedures, requesting officers, and institutions are entirely different. This is the classic
12 comparison of apples versus oranges. Apples are governor's warrants for extradition and oranges
13 are requests by the department of corrections for detaining individuals. Both statutory schemes
14 outline the respective due process considerations to be afforded an individual falling under the
15 statutory scheme. When a governor's warrant is issued, individuals are brought before a court of
16 law and informed of his rights by a judge, bail is set, and a hearing is also put into place.
17 However, in Idaho Code § 19-5001 the warden or commissioner, upon receipt of a petition for a
18 detainer, then informs individual of his rights with regard to that detainer. The Court system is
19 uninvolved in the procedure outlined in Idaho Code § 19-5001.
20

21 Mr. Morgan's Motion to Dismiss is strengthened by the existence of both statutory
22 schemes. The state of Idaho had two viable means to bring Mr. Morgan back to the state of Idaho
23 in order to stand trial on this particular case. The state of Idaho initiated the first of those
24 procedures by seeking a governor's warrant which was sent to the state of Montana and
25

26 **MEMORANDUM IN SUPPORT OF MOTION**
27 **TO RECONSIDER -5-**
28
29
30

1 prosecuted in the courts of said state. Mr. Morgan waived his right to extradition, but the state of
2 Idaho took no action at that time to return him to Idaho at that time.

3 Once that decision was made, the state of Idaho could then exercise option number two.
4 The state of Idaho, through its director of the Department of Corrections, could have requested a
5 detainer so that the state of Montana would have held Mr. Morgan and made him available for
6 transport back to the state of Idaho, should Mr. Morgan have requested a trial within 180 days of
7 being advised of his right to have one.³
8

9
10 However, the state of Idaho made no such request, and that left Mr. Morgan to serve out
11 four years of his sentence, before he was released on parole on April 7, 2014. Mr. Morgan,
12 traveled back to the state of Idaho and continued living in the state of Idaho for more than a year
13 before he was arrested on the warrant issued in this case in May of 2015. The state of Idaho slept
14 on its rights, even though procedures were available to them to bring Mr. Morgan to justice.
15

16 As has been argued previously by Mr. Morgan, Idaho Code § 19-3501 sets forth the
17 period of 180 days for which the prosecuting authority must file an information after an
18 individual has been arrested. Given that the argument over "detainer" as defined by Idaho Code §
19 19-5001 has no application to the analysis of Idaho Code section 19-3501, the question defaults
20 back upon the issue of whether Mr. Morgan was arrested when the extradition warrants were
21 served upon him in Montana. As Mr. Morgan argued in his initial brief in this matter, the state of
22 Idaho requested a governor's warrant from the state of Montana, and after Mr. Morgan was
23 served with the same, Mr. Morgan waived extradition. It is further a matter of record of that Mr.
24 Morgan was arraigned by the courts in the state of Montana and bond was set in his extradition
25
26
27
28
29
30

**MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER -6-**

case. Consequently, the 180 day period set forth in Idaho Code § 19-3501 was initiated in February 2010 or March of 2010 when the governor's warrant was issued. Thus, the state of Idaho had 180 days of February in order to bring Mr. Morgan back to the state of Idaho, to stand trial and avoid dismissal pursuant to Idaho Code § 19-3501.

Since the state of Idaho did not move to extradite Mr. Morgan, it then should have filed for a detainer pursuant to Idaho Code § 19-501. Once again the state took no action pursuant to this statutory scheme. Because of these failures, the court has no other choice than to hold that no information was been filed against Mr. Morgan during the 180 day period following February 2010. Consequently, the complaint filed in 2010 should be dismissed.

The next step in this analysis involves the question as to whether the tolling provisions set forth in Idaho Code § 19-404 can be applied by the state to salvage this situation. Where an individual has left the state of Idaho and sought refuge in another state, then Idaho Code § 19-404 would be applicable to toll the statute of limitations. However, Idaho Code § 19-5001 trumps Idaho Code § 19-404 with regard to the statute of limitations. In pertinent part, Idaho Code § 19-5001(a) states that

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and *difficulties in securing speedy trial of persons already incarcerated in other jurisdictions*, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is *the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition* of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. (emphasis added)

³ Montana has subscribed to the same interstate compact set out in I.C. § 19-5001 *et. seq.* See M.C. § 46-31-101.

**MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER -7-**

1 Plainly stated, the policy of this statute is to "encourage the expeditious and orderly disposition"
2 of any and all detainees which are based upon "untried indictments, information or complaints."
3 The statute clearly recognizes that there are "difficulties in securing speedy trial of persons
4 already incarcerated in other jurisdictions."
5

6 The aim of the statute is to provide an efficient and effective way for prisoners held in the
7 jails of sister states to have their cases resolved while respecting their constitutional right to a
8 speedy trial. An entire reading of the statute indicates that it places the burden of going forward
9 with these cases on the state of Idaho. The state of Idaho through its own initiative must put forth
10 a petition to the local court where the charges are filed for certification, whereafter the petition is
11 sent on to the Idaho Department of Corrections. Thereafter a petition is sent to the state of
12 Montana for a detainee, which then triggers Mr. Morgan's speedy trial rights and at the time the
13 provisions set forth in Idaho Code § 19-5001.
14

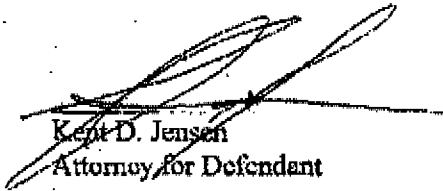
15 The state of Idaho cannot claim either ignorance of the law or of the facts in this case and
16 their complete failure to follow through with the proper procedures with respect to the
17 disposition of the case. The state of Idaho did not make any attempt whatsoever to ensure that
18 Mr. Morgan's rights three speedy trial were honored. It is entirely disingenuous at this time for
19 the state of Idaho to claim that Mr. Morgan has somehow forfeited those rights and that the
20 statute of limitations was tolled during the time Mr. Morgan was incarcerated.
21

22 CONCLUSION

23 It is respectfully submitted that based upon the foregoing, that the charges should be
24 dismissed.
25

26
27
28
29
30 **MEMORANDUM IN SUPPORT OF MOTION
TO RECONSIDER -8-**

1 DATED this 30th day of October, 2015.

2
3 
4 Kent D. Jensen
5 Attorney for Defendant

6 CERTIFICATE OF SERVICE

7 I hereby certify that on this 30th day of October, 2015, I served the foregoing
8 Memorandum in support of Motion to Correct and Dismiss upon the attorney for Idaho by e-
9 mail, addressed as follows:

10 Minidoka County Prosecutor

11 cdrafer@co.minidoka.id.us

12
13 
14 Kent D. Jensen
15
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30 MEMORANDUM IN SUPPORT OF MOTION

TO RECONSIDER -9-

EXHIBIT A

**BOARD OF PARDONS AND PAROLE**

1002 Hollenbeck Road ~ Deer Lodge, Montana 59722

TO: THE MONTANA DEPARTMENT OF CORRECTIONS

and

TO: MORGAN, Dustin Jade, DOC ID Number 3005009, hereinafter referred to as Parolee

WHEREAS, the Parolee, who is now confined in the Crossroads Correctional Center, was committed by lawful judgment to serve a term of 15yrs w/10yrs ss; 15yrs w/10yrs ss cc imprisonment, which term commenced on the 7th day of January, 2010.

WHEREAS, the Montana State Board of Pardons and Parole, hereinafter called the Board, has considered all pertinent information concerning the Parolee as required by law; has interviewed said Parolee personally; and, after due deliberation, has concluded that it will be in the best interest of society to place said prisoner on parole.

NOW THEREFORE, it is hereby ordered that Dustin Jade Morgan be placed on parole from said term of imprisonment. This parole shall commence on the 7th day of April, 2014, and shall remain in force and effect until the 6th day of January, 2016, unless either the date of commencement or the date of termination is changed by order of the Board or by operation of law and after due notice to the Department of Corrections and to the Parolee. This parole shall be and remain in full force and effect subject to the conditions set forth and only so long as the Parolee shall faithfully and fully perform and observe each and all said conditions, restrictions, and limitations. *Probation Expires: 1-3-2026

DATED at Deer Lodge, Montana, this 2nd day of April, 2014.

A Conditional Discharge from Supervision may be requested in accordance with Section 46-23-1021, MCA, and 20-25-704, A.R.M.

BOARD OF PARDONS AND PAROLE

Attest:


Executive Director

By:


Board Chair

Original (with Gold Seal) - File

Copy - Parolee, Records, Central-CCD

CE: DDCS/Parole/Cert/Gow.60)

EXHIBIT B



State of Montana
Department of Corrections
Adult Probation & Parole

TRAVEL PERMIT

Correctional Status: SECURE

Issued Date: 04/03/2014

☐ Provisional
☐ Temporary

NAME: MORGAN, DUSTIN DOC ID#: 3005000

Description: [REDACTED]

Race: White

Gender: MALE

Height: 6 ft 2 in

Hair: Brown

Eyes: Green

Weight: 170

Name and Address of Destination: KEVIN MORGAN
536 SUNBEAM ROAD
AMERICAN FALLS, ID 83211

Phone: ()

Date Leaving: 04/07/2014

Date Returning: See Reporting Instructions

Accompanied by: KEVIN MORGAN

Relationship: Father

Method of Travel: Private Vehicle

Year/Make/Model/Color: 99 Pontiac Grand Prix Red

License Number of Vehicle: 2PS99

Purpose of Trip: Parole - Interstate

Reporting Instructions/Comments: Report in person immediately upon arrival (no later than 4-10-2014) to Officer of the Day at 1135 Yellowstone, Suite K, Pocatello ID 83201 (208) 237-9194.

This offender is under supervision for the following offense(s):

Offense: Criminal Possession with Intent to Distribute

Offense: Tampering with Physical Evidence

Prison Discharge Date

01/06/2015

Probation Discharge

01/05/2025

Parole Discharge Date:

01/06/2015

I have been given this permission with the explicit understanding that I am to continue to follow the rules and regulations of my Parole/Probation/Pardon/Intensive Supervision/Conditional Release, and to travel only to the location designated above. If I should be arrested upon a warrant or order from Montana during the period of this trip, I have signed a waiver of extradition in Montana and will not resist being returned to Montana.

LISA WIRTH by Deputy Boasitt

Approved By:

WIRTH LISA

Dustin Morgan

Offender Signature:

Board of Pardons and Parole
1002 Hollenbeck Road
DEER LODGE, MT 56722
Phone: (406)846-1404

EXHIBIT C



Name: Dustin J Morgan
ID: 1448-887418
City of American Falls, Job RD40
29.75 Hours @ \$9.00 Regular

CURRENT	YEAR TO DATE
267.75	
5267.75	\$1,347.75
5267.75	\$1,347.75
-14.25	-97.02
-15.80	-83.58
-3.88	-19.54
-7.00	-48.00
5225.42	

Total Earnings
Total Taxable Wages

Federal Income Tax WTH
Social Security Employee
Medicare Employee
State Income Tax WTH ID

Net Amount For Check: 22933987 Dated 08/06/2014

Dustin J Morgan
535 Sunbeam Road
American Falls, ID 83211

Pocatello ID USA [1448]
830 North 5th Avenue
Pocatello, ID 83201

From

Fri Oct 30 17:40:09 2015

Page 18 of 21

EXHIBIT D

Idaho State UNIVERSITY

College of Technology - Student Services
921 South 8th Avenue, Stop 8380 • Pocatello, Idaho 83209-8380

July 28, 2014

Dustin Morgan
535 Sunbeam Rd
American Falls ID 83211-1429

Dear Dustin:

Congratulations! We are pleased to welcome you to Idaho State University. You have been selected for admission to the Automotive Collision Repair & Refinishing program for the Fall 2014 semester at the College of Technology. Classes for this program will begin on August 25, 2014. This offer of admission requires that you successfully complete all current course work. If you have not already done so, please make arrangements for ISU to receive your final high school transcript with verification of your graduation date and final grades. The official documents can only be received at ISU from the institution, not from the student.

You have been assigned an ISU ID (also called "Bengal number"), which grants you access to important resources and services. Your ISU ID is 215337. You have also been given an account on Google Apps at ISU (which provides email and more) and access to BengalWeb, the University's Internet portal. It is essential to check your ISU email frequently. Please review the enclosed sheet carefully for additional information. The username that you will enter to sign into your portal email account and BengalWeb is: morgdust. Your email is: morgdust@isu.edu.

Your temporary password for these services will be sent to you via U.S. mail within the next 10 business days. After receiving, please go to <https://www.isu.edu/departments/its/passchange.html> at once and replace your temporary password with one of your choice. After you have done this, follow the enclosed sheet to sign into your BengalWeb and your Google Apps at ISU account.

Our initial review of your application has determined that you are a resident of Idaho; therefore, you will be assessed resident tuition.

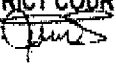
Have you served in the U.S. Military? If so, please log on to www.isu.edu/veterans and sign up for news, information and special activities just for U.S. veterans and their families.

On behalf of the entire university, we extend a warm welcome and best wishes for your success. If you have additional questions, please contact College of Technology Student Services at (208) 282-2622.

Sincerely,



Corsey Zink
Director, Student Services
ISU College of Technology

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 11/6/2015 11:04 AM
Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ROBERT S. HEMSLEY, *Chief Deputy Prosecuting Attorney (ISB#7955)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208) 436-7187
Facsimile: (208) 436-3177

ATTORNEY FOR THE STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

STATE OF IDAHO,)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>OBJECTION TO MOTION TO</u>
	)	<u>TO CORRECT RECORD AND</u>
DUSTIN JADE MORGAN,	)	<u>RECONSIDER OR IN THE</u>
	)	<u>ALTERNATIVE DEFENDANT'S</u>
Defendant.	)	<u>SECOND MOTION TO DISMISS</u>

COMES NOW, the State of Idaho, by and through Lance D. Stevenson, Minidoka Prosecuting Attorney in and for the County of Minidoka, and objects to defendant's Motion to Correct Record and Reconsider or in the Alternative Defendant's Second Motion as set forth in the Statement of Facts and Argument.

STATEMENT OF FACTS

On January 11, 2010, a criminal complaint, warrant, and affidavit of probable cause was filed in Minidoka Magistrate Court in Minidoka County Case Number CR-2010-81, on Dustin Jade Morgan for the offenses of Felony Eluding, in

OBJECTION TO MOTION TO- 1
DISMISS

violation of Idaho Code Section 49-1404(2)(a), and Driving Without Privileges, in violation of Idaho Code Section 18-8001(5).

On January 21, 2010, the defendant was arrested in Polson County, Montana, on charges of Criminal Possession with Intent to Distribute, Tampering with Evidence, Criminal Endangerment. Montana case number DC-10-12.

On January 21, 2010, notice of the Idaho warrant was received in Montana to detain Dustin Morgan on Idaho charges. On February 23, 2010, the State dismissed this case.

On February 24, 2010, a criminal complaint, warrant, and affidavit of probable cause was re-filed in Minidoka Magistrate Court in Minidoka County Case Number CR-2010-550, on Dustin Jade Morgan for the offenses of Felony Eluding, in violation of Idaho Code Section 49-1404(2)(a), and Driving Without Privileges, in violation of Idaho Code Section 18-8001(5).

On February 26, 2010, notice of the Idaho warrant was received in Montana to detain Dustin Morgan on Idaho charges.

On March 4, 2010, an Application for Requisition was issued by the Governor of the State of Idaho.

On May 20, 2010, the defendant appeared in the State of Montana court in regards to sentencing and extradition. The defendant indicated that he was willing to waive extradition. However, the defendant never formally waived his extradition pursuant to Idaho Code § 19-4530.

On May 18, 2015, Dustin Morgan was arrested on the Idaho warrant in Bannock County in CR-2010-550.

ARGUMENT

The State of Idaho objects to the defendants Motion to Correct Record and Reconsider or in the Alternative Defendant's Second Motion to Dismiss on the basis

**OBJECTION TO MOTION TO- 2
DISMISS**

set forth below.

The defense claims that Idaho Code § 19-5001 applies to Mr. Morgan case. Recognizing the Court relied on I.C. § 19-5001 in its opinion dated September 30, 2015, the State respectfully disagrees that I.C. § 19-5001 applies because no Interstate Agreement on Detainers (IAD) was requested by Idaho Department of Corrections pursuant to I.C. § 19-5001. The Minidoka County Prosecutor's office issued a criminal warrant on July 11, 2010, which was placed on the NCI allowing other states to recognize the warrant. After the fact, Mr. Morgan was arrested in Montana on new Montana charges on July 21, 2010. At that time Montana pursuant to the Uniform Criminal Extradition Act (UCEA) has the authority to surrender Mr. Morgan at Montana governor's demand by executive authority to another state, in this case Idaho, or may hold Mr. Morgan until he has been tried or discharged, or convicted and punished in the state of Montana. Montana UCEA mirrors I.C. title 19 chapter 45.

This case does not present any issue pursuant to Title 19 chapter 50 of Idaho Code because an (IAD) was not pursued by the State of Idaho. Mr. Morgan the entire time he was in Montana was a fugitive from justice because the Idaho warrant had not been served upon him until he returned to Idaho on May 18, 2015. Although the Court reached the appropriate decision the Court reason based on I.C. §19-5001 was misguided. Mr. Morgan was simply a fugitive while serving time in Montana pursuant to I.C. title 19 chapter 45 and not held by a detainer pursuant to title 19 chapter 50.

Therefore, the statute of limitation time did not start until Idaho's warrant was issued upon Mr. Morgan. Hear Idaho's warrant was not issued until Mr. Morgan was in Bannock County when the authorized law enforcement had authority to properly serve the warrant and starting the time line consistent with speedy trial. In this case the actual warrant was not served until May 18, 2015.

**OBJECTION TO MOTION TO- 3
DISMISS**

The Defendant claims that he waived the Montana's governor warrant but has failed to produce any writing indicating that was his intent. The defendant references a document that he calls the "governor's warrant," but in fact the document itself on its face does not reference a warrant but instead is entitled governor's requisition requesting a rendition of which must be in order prior to the fugitive being made available for rendition (transport). *See Yates v. Gilles*, 841 S.W.2d 332 (Tenn. Cr. App. 1992), see Idaho Code § 19-4514. A governor's rendition is simply used to detain a defendant and to allow transportation of a defendant after local disposition including sentencing is complete in the state to another state. The service of a "governors rendition" a warrantless request, is not service of the actual arrest warrant that would then start the clock for speedy trial pursuant to Idaho Code § 19-3501. Id.

When the governor's request for mediation is served, the demanding state's warrant i.e. Idaho's warrant is not being served. This arrest is "warrantless" because there is no local (asylum state) warrant for the fugitive. *See State v. Hudson*, 921 P.2d 538, 542 (Wash. 1996); *Ex parte Morgan*, 641 So.2d 840, 844 (Ala. 1994); *State v. Lee*, 738 P.2d 1081 (Wash. App. 1987); *State v. Lyrek*, 385 N.W.2d 248 (Iowa 1986); *Street v. Cherba*, 662 F.2d 1037 (4th Cir. 1981); *Holbird v. State*, 650 P.2d 66 (Okl. Cr. 1982); *State v. Everett*, 520 P.2d 301, 303 (Ariz. 1974); *Berigan v. State*, 236 A.2d 743, 744-745 (Md. App. 1968). The actual warrant of arrest cannot be served until the property authority can serve the warrant pursuant to Idaho Code § 19-4514. Montana's law enforcement does not have the proper authority to serve such a warrant. It wasn't until Mr. Morgan was in Bannock County when the authorized law enforcement had authority to properly serve the warrant and started the time line relevant to speedy trial. In this case the actual warrant was not served until May 18, 2015.

Notice of the Idaho warrant is merely given to notify all parties that this

OBJECTION TO MOTION TO- 4
DISMISS

individual is wanted in the State of Idaho and that they have an interest in his return to Idaho.

Additionally, disposition of local charges, including sentencing, should be completed before the fugitive is made available for rendition. *Id.* Furthermore, even though a fugitive against whom local charges are pending may waive extradition in hopes that he can speed his removal from that state and avoid the local charges Idaho Code § 19-4519 prevents him from doing this.

As noted in I.C. § 19-4519 authorizes the governor to “hold” the fugitive until he has completed his sentence before rendering him up to the demanding state. Normally, disposition of local charges, including sentencing, should be completed before the fugitive is made available for rendition. See *Yates v. Gilles*, 841 S.W.2d 332 (Tenn. Cr. App. 1992)

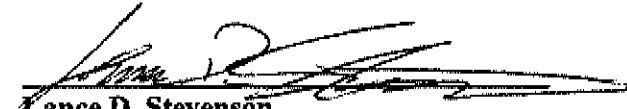
Therefore, the defendant is considered a fugitive from justice pursuant to I.C. title 19 chapter 45. The State of Idaho never filed an IAD pursuant I.C. title 19 chapter 50. Because Mr. Morgan was a fugitive from justice I.C. § 19-3501 (1) does not apply to a defendant who was returned for trial from another state due to delay caused by his absence. *In re Pearce*, 40 Cal.App.3d 399, 402 (1974); *People v. Underwood*, 162 Cal.App.3d 420, 424 (1984). *Cf. Comm. v. Beauchamp*, 595 N.E.2d 307 (Mass. 1992). Thus, the right to speedy trial pursuant to I.C. § 19-3501 does not apply until a warrant for arrest is actually served by the proper authorities.

CONCLUSION

Therefore, we request that the Court deny the defendants motion pursuant to title 19 chapter 45 because Mr. Morgan was a fugitive from justice while serving his time in Montana.

OBJECTION TO MOTION TO- 5
DISMISS

DATED this 6th day of November, 2015.


Lance D. Stevenson
Prosecuting Attorney

**OBJECTION TO MOTION TO- 6
DISMISS**

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of November,
2015, I delivered a true and correct copy of the within and foregoing document upon
the attorney(s) named below in the manner noted:

Kent D. Jensen

P. O. Box 276


Burley, ID

 By depositing copies of the same in the United States mail, postage prepaid, at
the post office in Rupert, Idaho.

 By Hand delivering copies of the same to the office of the attorneys(s) at his
office at the address stated above.

 By placing copies of the same in the Public Defender's basket located in the
Clerk's Office in the Judicial Annex, Minidoka County Courthouse.

 x By telecopying copies of the same to said attorneys(s) at 208-878-3368.


Kim Bourn

**OBJECTION TO MOTION TO- 7
DISMISS**

COURT MINUTES

**IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 11/9/2015 12:30 PM
Patty Temple
CLERK OF THE DISTRICT COURT
Filed By:**

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Pretrial Conference

Hearing date: 11/9/2015

Time: 9:40 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is present

Court calls case, have motion for reconsiderations filed by defense and legal issue is out there, inquires where at on pretrial,

Mr. Stevenson notes have filed response to motion

Court has received

Mr. Jensen addresses court, have set for hearing on Thursday morning at 9:00 a.m. on motion, will discuss with court and ask to leave set as is for Thursday

Mr. Stevenson responds, do not know if motion on Thursday is dispositive for trial, have witnesses, one of whom is from Idaho Falls, would be prepared to go on 18th

Mr. Jensen responds, will discuss with defendant this morning and advise court if trial is going forth

Court comments, this case is not standard situation by any means, if decision on motion remains the same is this case going to trial, inquire

Mr. Jensen responds, would rather not comment at this point, can advise court this morning after discuss with defendant today

Court responds, inquires if could trail matter

Mr. Stevenson responds, after 11:00 a.m. he would not be available but Mr. Hemsley could sit in

Court instructs Mr. Jensen to take time to discuss and will trail matter

9:46 a.m. recess

10:13 a.m. session

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is present

Court calls case, inquires

Mr. Jensen addresses court, would like to give court enough time time make decision on motion, and agree to continue matter,

Court responds, have issue of speedy trial, motion would not constitute reason for delay explains

Mr. Jensen responds, the whole speedy trial is issue trying to deal with from original filling of this case, do not believe will be raising any additional speedy trial issues

Court responds and comments further, information was filed in July, discusses trial date possibilities, motions are appropriate for parties to talk about whether resolve case or not, ask if delay occasioned by motion would not constitute basis for assertion of speedy trial

Mr. Jensen agrees would not

Court questions defendant re: understanding agreement to waive speedy by moving the trial from this date to another one

Mr. Jensen responds, really did not discuss and hesitant to waive

Court responds, defense motion may have done that, comments further

Mr. Jensen responds, do not know how to answer question at this juncture, would agree to vacate trial

Mr. Stevenson suggest trailing vacating trial until after motion on Thursday, state is confident that waiving speedy trial by reasoning in motion

Court comments, if really get problematic can get a trial set in time, will vacate current trial and can discuss any speedy trial issues if it became necessary

10:20 a.m. Mr. Jensen notes that defendant may not be here on Thursday and have already filed waiver, cites considerations

Court responds

Mr. Stevenson agrees is appropriate under rule 43

Court reviews rule and is not required to be here,

10:21 a.m.

COURT MINUTES

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Motion to Dismiss

Hearing date: 11/12/2015

Time: 9:10 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is not present

Court calls case, here on motion to reconsider or second motion to dismiss filed by defendant, defendant's presence is not required

Mr. Jensen has nothing preliminary

9:11 a.m. Mr. Jensen makes statement re: facts of case and did not have correct dates on original brief, have supplied to Court now, defendant was released on 4-7-14 on interstate compact then came to reside in Idaho and employed by June of 2014 and had applied for entrance to ISU,

Court inquires if state contests dates

Mr. Stevenson responds, no significance to legal argument

Mr. Jensen continues comments, cites to State's objection, in between two legal questions and how to deal with them, cites to 19-5001 subparagraph, interpret statute that there is specific procedure to be engaged in in order for statute to have effect and take precedence

explains, statute to be very difficult to read, leaves with impression that prisoner can start petition themselves

Court confirms

Mr. Jensen continues argument, cites to US Supreme Court case quoted and reads portion into record and continues argument, refers to Idaho case cited by Court which holds that individual can petition but think is wrong, continues argument, all cases read dealt with procedures between states, and continues argument

9:16 a.m. Court re: applicability of statute and original decision, if assuming there was detainer think statute is clear that to take advantage of time limits there has to be strict compliance with it and neither party is claiming there was in this case, is separate argument if statute does not apply, inquires if saying that statute does not apply

Mr. Jensen responds, do not think that statute applies, no facts support that particular statute was invoked, argument is straddled between what originally filed on warrant issue which kicks in I.C. 19-3501, has copy of original file in Montana which is original warrant of arrest issued by Minidoka County which does contain writing on it indicating when Mr. Morgan was originally arrested in Charles, Montana, on January 20, 2010, case #

Court inquires which case

Mr. Jensen believe first case #2010-81

Court inquires

Mr. Stevenson responds was first case

Mr. Jensen confirms was first case, was arrested on 1-20-10 and dismissed in February

9:19 a.m. Court responds, was dismissed, cites to previous decision which held that dismissal created bar to re-filing misdemeanor but not felony, what difference make when served with warrant

Mr. Jensen responds and cites to extradition documents filed on second case, cites to court minutes from Montana, court minutes indicate that defendant waived extradition but cannot find written waiver

9:20 a.m. Court comments, Montana dismissed detainer case; recollection is that was part of reason for prior decision, once fugitive detainer case is dismissed what is there?

Mr. Jensen responds, once waived extradition then Idaho not only had waiver where could have got him but also had I.C. 19-5001 continues argument, in 2014 when released

whatever warrants were existing at that time should have been evident and Montana should not have released him unless Idaho agreed, goes back to original argument under 19-5001, that State of Idaho had two avenues to bring him back to stand trial and did not do so, continues argument, cites to Doctrine of Laches, Idaho slept on its rights, seems that did not have speedy trial issue, statute of limitations has now run and matter should be dismissed

9:23 a.m. Court questions re: extradition case, once Montana dismissed extradition case what could Idaho do?

9:24 a.m. Mr. Jensen responds, cites to preamble of 19-5001, states have law to allow states to exchange individuals to stand trial, Idaho could have used statute to get defendant back to stand trial after Montana dismissed extradition, continues argument,

Court inquires when warrant on second case was served, if at all, in Montana, goes to 3501 argument

9:25 a.m. Mr. Jensen responds, two motions actually filed in Montana, one dismissed and then refiled a second motion to have defendant detained and have bond set at \$10,000, reviews motions filed in Montana cases

9:27 a.m. Court comments, cite to 2-26-2010 Order that has been provided before which indicates a Montana Statute and State of Idaho requesting \$10,000 bond, bail set at \$10,000 with requirement to report to 5th District Court within 3 days of release,

9:28 a.m. Mr. Jensen responds and cites to Montana Case #2010-34 warrant issued by Justice of Peace Chuck Wall in Montana which was good for 30 days

Court responds, cites to document signed by Chuck Wall in initial appearance document submitted

Mr. Jensen responds, will supply copies of files to court

Court would be happy to look at any documents assuming state has no objections

Mr. Jensen comments further and cites to documents filed in Montana on 2-26-10

9:29 a.m. Court comments, cites to minute entry of May 20 with Judge Christopher refers to case #DC-10-56 and #DC-10-57 and sentencing in #DC-10-12, think is Montana sentencing

Mr. Jensen confirms Montana sentencing,

9:30 a.m. Court continues reviewing minute entry, may be where confusion began

Mr. Jensen responds, will provide court with complete copies of both Montana files, did file complaint for extradition and then did re-serve Idaho's warrant on 2-26-10

Court responds, had been served with the warrant, is 19-35 argument that once served with warrant has to be essentially a bind over within 6 months from date of arrest

Mr. Jensen agrees, nothing further on motion

9:31 a.m. Mr. Stevenson cites to Idaho Code title 19, chapter 51, code section generally kicks in when IDOC starts process, is used where multiple states want a piece of defendant, continues comments re: code, no language in code that says is duty of IDOC to facilitate process, in this case State is arguing that process was not started

9:33 a.m. Court cites to prior ruling that if process was started there has to be strict compliance with statute, no argument that was started under statute, if applies pretty clear that time limits did not get triggered

9:34 a.m. Mr. Stevenson agrees with statement

Court comments, parties saying did not apply

9:34 a.m. Mr. Stevenson continues, have fugitive of justice so under title 19-45, state put out warrant for arrest because defendant committed crime in Idaho, entire nation then is on notice, once caught in a state, in this case Montana, Montana has right to start process of Governor's warrant, cites to 45-19 and reads portion into record, is up to Montana and Idaho cannot go get him until given permission from Montana, Idaho does not have interest in Montana's governor's warrant, Defendant stated in hearing he would waive extradition but then refused to sign written waiver, continues argument, essentially Idaho and Montana are in stalemate, Idaho wants him but Montana has not produced him nor initiated proceeding to produce him

Court comments re: governors' warrant

Mr. Stevenson responds, was Montana's governor's warrant, all Idaho had was an outstanding warrant in Idaho that stayed active and when he surfaced in Idaho then they had valid warrant and time kicked in, warrant was served 5-18-15 cites to Idaho Code Title 19, chapter 19, argument is that 3501 doesn't apply because warrant was not served until 5-18-15

9:39 a.m. Court questions state, in situation outlined seems to suggest that procedure for interstate detainers could be available for defendant, would defendant be able to assert rights under statute

9:40 a.m. Mr. Stevenson responds, under title 19, chapter 50 defendants can avail him of statute and can require IDOC to go get him

Court responds, defendant is not convicted here yet, inquires further

Mr. Stevenson responds, must go through chapter 50 to initiate process

Court comments; will review prior ruling, interstate detainer could apply, remedies under statute were never sought and so time limits were not violated, questions State re: statute

Mr. Stevenson responds, statute could have applied if either side had initiated but neither side did so

Court comments, construes defense argument that was not but maybe should have been, inquires re: argument of Laches or equitable doctrine

Mr. Stevenson responds, laches would work if defendant did not have duty to initiate also, comments further, statute gives defendant right and remedy, and laches would be more effective if state only had right and remedy, cites further to chapter 50, nothing further in objection argument

9:45 a.m. Mr. Jensen makes response argument, responds to state's argument re: no written waiver, cites considerations, there was no hearing in Montana; responds to state's argument on 19-5001, cites to paragraph d, no duty of prisoner to initiate proceedings

Court responds, does not think there is

Mr. Jensen continues argument, acknowledge that written waiver does not exist, cites to I.C. 19-5001, is not defendant's responsibility or duty to initiate detainer in State of Idaho, it then becomes issue of Idaho appointed attorney to come to court and ask for detainer

Court questions Mr. Jensen re: 19-5001(c)(1) indications, there was untried case here which was basis for detainer, complicated statute does not define detainer, cites to holding on page #4 of prior order definition of detainer, US supreme court also held that detainer could be a warrant already filed against person in custody, had been proceedings and attempts on fugitive from justice, if there is detainer then why does 19-5001 not apply

Mr. Jensen responds because warrant was dismissed

Court responds that fugitive case was dismissed but governor's warrants and Idaho warrants were still there

Mr. Jensen responds, apparently were not in Montana system as he was released April of 2014 and nothing surfaced at that point, if Idaho had put some detainer to hold him then

when Montana got ready to release him there was nothing to show them there was a hold in Idaho

9:54 a.m. Court responds and cites to dismissal of fugitive warrant, comments further

9:55 a.m. Mr. Jensen responds further, detainer is set out as a specific procedure, if start analogizing then run into due process problems, specifics outlined in 19-5001, continues argument

9:56 a.m. Court responds further, may be strategic decision and defendant would not want to avail himself of statute and is it really due process

Mr. Jensen responds further, when detainer is lodged defendant must be informed of specific rights, may choose not to exercise rights but would have paper trail, in this case do not have paper trail, if analogize then 19-5001 means nothing

9:58 a.m. Court responds to comments, cites to I.C. 4519-5001 essentially protects both the defendant and the prosecutor, cites to 4519, and gives discretion to hold until punished in state

Mr. Jensen responds, in hypothetical situation that is what can happen

Court responds, that is what did happen, did Montana time and that is what Fugitive from Justice Statute contemplates

10:01 a.m. Mr. Jensen responds, final response argument in support to motion

Extradition case dismissed, judgment in Montana, sheriff transports to dept. of correction and he did his time, while there was untired case in Idaho, think interstate detainer could apply

Mr. Jensen responds further, become issue of effective assistance of counsel in that regard,

10:03 a.m. Court comments re: standard to advise someone out of state, do not think that issue can be resolved at this point, any issue of ineffective assistance of counsel does not provide a defense now, no procedural posture to even look at, inquires of Mr. Jensen re: interstate agreement does not apply

10:05 a.m. Mr. Jensen responds, not saying does not apply, saying that statute does not put obligation on defendant to affirmatively exercise, don't see warrant process and it's statutes as being the same thing as detainer under 19-5001 and it's statutes, think that is where parties vary

10:06 a.m. Court agrees that do not think the statute 19-5001 puts any burden on either the defendant or the state but case law is clear that if defendant doesn't avail himself of rights under statute there is no time limit apply

10:08 a.m. Mr. Jensen responds, his argument is state of Idaho had same opportunity and did nothing so should have consequences, continues comments

Court responds, do not know that Laches apply, inquires what prejudice applies from delay

Mr. Jensen, end of December will be six years from when crime was alleged to have been committed

Court inquires re: State V Olsen cited by Mr. Jensne

Mr. Jensen responds, goes back to time when there were circuit judges and had to wait, cite is actually *Olson V State* @921873 recalls the issue was that delay was over 180 days, prejudice is assumed

10:11 a.m. Court responds re: delay and prejudice,

Mr. Jensen responds, 6 yr. delay is really the issue, argument is that have delay and there were means to bring defendant back to state and it was not his doing but was State of Idaho's doing, reads from *Olson V State*, if can show unreasonable delay in prosecution prejudice is presumed, contend that this is unreasonable delay because there were means to bring back to state and they were not used, nothing further

Mr. Stevenson nothing further

Mr. Jensen will submit two entire copies of Montana cases if no objection from state

Mr. Stevenson no objection

Court will take under advisement upon receipt of additional documents

10:14 a.m. recess

Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: *[Signature]*

ANALYSIS AND DISCUSSION

In the Court's Order filed September 30, 2015, the Court determined that the Defendant's Case fell within the procedure of the interstate Detainers Act, specifically Idaho Code § 19-5001. In reviewing the original Order, the Court determines that the Interstate Detainers Act does apply, for the same reasons cited within. At the hearing the Defense appeared to agree that the Defendant could have requested a trial on the untried complaint in Idaho, but did not. This means that Idaho Code § 19-5001 (et seq.) does apply, but its procedures were never triggered. Also, the state raised the issue of Idaho Code § 19-4519, (Montana Code § 46-30-202), which makes sense when read together with the Interstate Detainers Act.

Furthermore, in the supplemental documentation the Defendant submitted of the Defendant's case in Montana, the Court minutes from May 20, 2015, stated: "the Defendant is willing to waive extradition and the State does have a governor's warrant so at the time the State moves to dismiss the extraditions." The Defendant's extradition case was then dismissed. The acknowledgement of the warrant and the dismissal of the extradition charges further supports the Court's original finding that the Defendant's case falls within the Interstate Detainers Act.

Under the Interstate Detainers Act, in order for the Defendant to invoke the speedy trial provision after there is a detainer, "the prisoner must deliver to the warden or custodial official holding custody over the prisoner written notice and request for final disposition" of the pending case in another state. *State v. Mangum*, 153 Idaho 705, 709 (Ct. App. 2012). There is no evidence that the Defendant requested the final disposition of his Idaho case.

Moreover, there is no requirement that the state take affirmative action to instigate proceedings after there has been a detainer. *State v. Moglia*, 113 Idaho 672, 674 (1987). Rather, the statutory procedures can be initiated by either party, but the statute does not require either

party to take such action. *Id.*; see IDAHO CODE § 19-5001. Therefore, the failure of the state to take action to ensure the disposition of the case does not implicate constitutional speedy trial concerns.

Notably, even if the Interstate Detainers Act did not apply, under Idaho Code § 19-3501 the pre-indictment delay would not amount to a denial of the due process of law requiring a speedy trial. Before a court can find a due process violation, the Defendant must show that the delay “caused substantial prejudice to [the defendant’s] rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused.” *United States v. Marion*, 404 U.S. 307, 324 (1971). See *State v. Murphy*, 99 Idaho 511, 514 (1978). The determination of whether the right to speedy trial has been denied is an issue within the trial court’s discretion. *State v. Lund*, 124 Idaho 290, 292 (Ct. App. 1993).

Based on the record, there is no showing that the delay substantially prejudiced the Defendant or that the delay was a tactical decision made by the prosecution. Due to this lack of showing on the part of the Defendant, the Court is within its discretion to deny the Defendant’s Motion to Reconsider/Second Motion to Dismiss.

Additionally, the Court notes that the record was corrected on the record of the November 11, 2015 hearing. Both parties stipulated to the correct facts; however, these factual changes do not affect the Courts original analysis in the Order filed September 30, 2015.

CONCLUSION

Based on the aforementioned discussion, the Defendant’s Motion to Reconsider, or in the Alternative, Defendant’s Second Motion to Dismiss is DENIED.

Dated: 11/18/2015
Signed: Jonathan Brody
Jonathan Brody, District Judge

CERTIFICATE OF SERVICE

I, Janet Sunderland, Deputy Clerk for the County of Minidoka, do hereby certify that on the 18 day of November, 2015, I filed the original and caused to be served a true and correct copy of the above and foregoing document: ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER, to each of the persons as listed below:

Lance Stevenson
P.O. Box 368
Rupert, ID 83350

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Email

Kent D. Jensen
P.O. Box 276
Burley, ID 83318
(208) 515-3464

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Via Email


CLERK OF THE DISTRICT COURT

BY: 
Deputy Clerk

COURT MINUTES

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Status

Hearing date: 12/14/2015

Time: 9:35 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is not present

Court calls case, set for status re: trial setting, inquires if defendant is still in Pocatello

Mr. Jensen responds, defendant has been in contacted, asks to be excused today due to bad roads, have been in contact with Mr. Stevenson and may need to set for change of plea

Mr. Stevenson asks for change of plea

Counsels agree to set on 1-4-16

Court sets for change of plea on 1-4-16

9:37 a.m. recess

COURT MINUTES

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 2/22/2016 02:19 PM

Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Change of Plea

Hearing date: 2/22/2016

Time: 9:17 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Michael Tribe

Defendant is not present

Court calls case, inquires

Mr. Jensen addresses court, have spoken with defendant and he said he was in automobile accident about a month ago and did not have car, would try to get ride but if not then would call but have not heard from him today, ask to continue a week or so and try to contact him

Mr. Tribe responds to continue, ask to get additional information by noon before continuing, do not know if bond

Court responds, sounds like Montana Probation Officer is aware of issues

Mr. Jensen responds further re: considerations in support of continuance

Court will continue matter one week but if defendant cannot find a way here will have to issue a warrant unless a real issue and then would like documentation why cannot appear

9:20 a.m. recess

COURT MINUTES

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 2/29/2016 01:42 PM

Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Change of Plea

Hearing date: 2/29/2016

Time: 11:26 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is present

Court calls case, set for change of plea, inquires

Mr. Jensen addresses court, were prepared for change of plea and cites to negotiations with state requiring defendant to waive right to appeal pre-trial motions and defendant will not do so. Want to resolve matter and so ask to reset matter for court trial and that would allow to reserve all rights to appeal, defendant has agreed to waive jury trial and will submit written waiver later

Mr. Stevenson responds, if going to plead to charge as presented then state has no problem with not waiving appeal rights

Mr. Jensen responds, can proceed then, plead to count I, rule 11 does require to submit a rule 11 agreement, can prepare and submit later

Court reviews rule, plea is conditional upon agreement of being able to appeal pretrial motions, as far as rule 11 goes does have Court's approval, does need to be in writing so follow up with that, would allow defendant to withdraw plea later if necessary

Mr. Jensen will prepare and submit Rule 11, no agreement on sentencing,

Court comments to defendant, will have placed under oath

Clerk places defendant under oath

Court inquires re: question #50 on advisory

Mr. Stevenson responds, would be under new statute

Court informs defendant that he would have to provide DNA and right thumb print –
Defendant understands and does not change his mind today

Court questions defendant – Defendant has not taken any alcohol, drugs or non-prescribed
meds in last 48 hours, prescribed meds do not affect understanding – Mr. Jensen advises
court that has had no problem with understanding in discussions

Court questions re: plea agreement – defendant did sign and agree with it,

Court questions re: advisory – Defendant did sign advisory, did have assistance of attorney,
answers and true and correct, would not change any answers and adopt answers under
oath

Court questions re: truth of charge of felony eluding – Defendant admits truth of charge and
explains what he did to be guilty

Mr. Stevenson is satisfied with factual basis


11:38 a.m. DEFENDANT PLEADS GUILTY

Court accepts plea as being knowing and voluntary given, is factual basis, order PSI, note do
have right to remain silent during PSI investigation and discuss with attorney, set
sentencing on 4-11-16

11:39 a.m. recess

Assigned to: _____
Assigned: _____ On: 2/29/2016 01:43 PM

Fifth Judicial District Court, State of Idaho
In and For the County of Minidoka
ORDER FOR PRESENTENCE REPORT AND EVALUATIONS

Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

STATE OF IDAHO
Plaintiff,

vs.

Dustin Jade Morgan
11328 Whispering Cliffs Dr
Pocatello, ID 83202

Case No: CR-2010-0000550

**ORDER FOR PRE - SENTENCE INVESTIGATION
REPORT**

CHARGE(s):

149-1404(2) Officer-Flee or Attempt to Elude a Police Officer
118-8001 3 Driving Without Privileges (Third Offense)

ROA : PSIO1- Order for Presentence Investigation Report

On this Monday, February 29, 2016, a **Pre-sentence Investigation Report** was ordered by the Honorable Jonathan Brody to be completed for Court appearance on:

Monday, April 11, 2016 at: 09:00 AM at the above stated courthouse.

☐ **Behavioral Health Assessments waived by the Court (PSIO1 ROA code)**

☐ **Waiver under IC 19-2524 2 (e) allowing assessment and treatment services by the same person or facility**

Other non- §19-2524 evaluations/examinations ordered for use with the PSI:

☐ Sex Offender ☐ Domestic Violence ☐ Other _____ Evaluator:

PLEA AGREEMENT: State recommendation

WHJ/JOC ☐ Probation ☐ PD Reimb ☐ Fine ☐ ACJ ☐ Restitution ☐ Other:

DEFENSE COUNSEL: Kent D. Jensen _____

PROSECUTOR: Lance D Stevenson _____

THE DEFENDANT IS IN CUSTODY: ☐ YES ☒ NO If yes where: _____

DO YOU NEED AN INTERPRETER? ☒ NO ☐ YES if yes, what is the language? _____

Date: February 29, 2016 Signature: _____

Judge



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO
MINIDOKA COUNTY, IDAHO
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
FILED 2/29/2016 05:19 PM

STATE OF IDAHO,
Plaintiff,

CASE NO. CR 2010-550

Patty Temple
CLERK OF THE DISTRICT COURT
Filed By:

____ Guilty Plea Advisory Form

____ Guilty Plea Advisory Form Alford Plea

vs.

DUSTIN JADE MORGAN
Defendant.

STATEMENT OF CONSTITUTIONAL RIGHTS
(Please initial each response)

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elect to have a trial, the state may not call you as a witness or ask you any questions. However, anything you do say can be used as evidence against you in court.

I understand that by pleading guilty I am **waiving** my right to remain silent before and during trial.

2. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county. You may be required to reimburse the county for the cost of this representation.

3. You are presumed to be innocent. You will be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am **waiving** my right to be presumed innocent.

4. You have the right to a speedy and public jury trial before twelve persons. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. You are not required to do so, however. The state must convince all of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am **waiving** my right to a speedy and public jury trial.

5. You have the right to confront the witnesses testifying against you. This occurs during a jury trial. At trial, the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call witnesses of your choosing to testify on your behalf. If you do not have the funds to

bring those witnesses to court, the state will pay the cost of bringing your witnesses to court and will compel their attendance by the use of the subpoena power of the court.

I understand that by pleading guilty I am waiving my right to confront the witnesses against me, and present witnesses and evidence in my defense. DM

QUESTIONS REGARDING ABILITY TO ENTER PLEA

(Please answer every question. If you do not understand a question consult your attorney before answering.)

Please Circle and Initial One

1. Do you read and write the English language? YES DM NO ____
If not, have you been provided with an interpreter to help you fill out this form? .. YES ____ NO ____
Do you want an Interpreter? YES ____ NO ____
2. What is your age? 29
3. What is your true and legal name? DUSTIN JADE MORGAN
4. What was the highest grade of school you completed? G.E.D.
If you did not complete high school, have you received either a general education diploma or high school equivalency diploma? YES DM NO ____
5. Are you currently under the care of a mental health professional? YES ____ NO DM ____
6. Have you ever been diagnosed with a mental health disorder? YES DM NO ____
If so, what was the diagnosis and when was it made? DRUG INDUCED
PSYCHOTICOPHRENIA 2007
7. Are you currently prescribed any medication? YES DM NO ____
If so, have you taken your prescription medication during the past 48 hours? YES DM NO ____
8. In the last 48 hours, have you taken any medications or drugs, or drank any alcoholic beverages which you believe affect your ability to make a reasoned and informed decision in this case? YES ____ NO DM ____
9. Are you under the influence of any alcohol, drugs, or other medication at this time? YES ____ NO DM ____
10. Do you claim that you are incapable of understanding or do not understand these proceedings? YES ____ NO DM ____
11. Is there anything going on in your life that affects your ability to enter a voluntary guilty plea? YES ____ NO DM ____
12. Do you claim that you are mentally incapable of understanding these proceedings or what it means to plead guilty to a crime? YES ____ NO DM ____

13. Are you having any difficulty in understanding what you are doing by filling out this form? YES NO DM

14. Is there any other reason that you cannot make a reasoned and informed decision in this case? YES NO DM

Plea Agreement

15. Is your guilty plea the result of a plea agreement? YES NO DM

If so, what are the terms of that plea agreement? (If available, a written plea agreement must be attached hereto as "Addendum 'A'")

No Plea agreement

~~SEE ADDENDUM A~~

16. Have you read this plea agreement? YES NO

17. Do you understand this plea agreement? YES NO

18. Is there anything about this plea agreement that you don't understand? YES NO

19. There are two types of plea agreements. Please initial the one paragraph below which describes the type of plea agreement:

- a. I understand that my plea agreement is a **binding** plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty and proceed to a jury trial. _____
- b. I understand that my plea agreement is a **non-binding** plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, up to the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea. _____

20. Is this plea agreement acceptable to you? YES NO

21. Has your attorney told you that you must accept this plea agreement? YES NO

22. Has your attorney or anyone else forced or coerced you in any way into accepting this plea agreement? YES NO

23. Have any other promises been made to you which have influenced your decision to plead guilty? YES NO

24. Has anyone told you what your sentence will be? YES NO

If so, what have you been promised? _____

25. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues? YES NO

If so, what issue(s) are you reserving the right to appeal? (A copy of the written conditional plea must be attached.) IN THE CASES DENIAL OF PRE-TRIAL MOTION TO DISMISS.

26. Have you waived your right to appeal your judgment of conviction as part of your plea agreement? YES NO

27. Have you waived your right to appeal your sentence as part of your plea agreement? YES NO
Under what conditions can you appeal your sentence? _____

28. Do you understand that by pleading guilty you will waive (or give up) any defenses, both factual and legal, that you believe you may have in this case? YES NO

29. Do you understand that this includes waiver of any claimed violations of your Constitutional rights? YES NO

30. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including: 1) any searches or seizures that occurred in your case, 2) any issues concerning the method or manner of your arrest, and 3) any issues about any statements you may have made to law enforcement? YES NO

31. Do you understand that by pleading guilty, you give up the right to pursue any motions (including motions to suppress or dismiss) that otherwise could have been filed and pursued in your case? YES NO

32. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty? YES NO

33. Have you discussed the elements of the offense(s) for which you are charged with your attorney? YES NO

POTENTIAL SENTENCE

34. I am charged with the crime(s) of FELONY ELUDING IN THE FIRST COURT.

The minimum and maximum jail sentence and fine including a "civil penalty" for each crime is
5 year \$50,000 FINE LITIGATE SUSPENSION FOR
A MAXIMUM OF (1) year.

35. In this case the court will impose a "unified sentence" consisting of a fixed term (or portion) and an indeterminate term (or portion). If you are required to serve this sentence in the penitentiary you will not be eligible for parole until you have served the fixed portion and thereafter will be paroled only if the parole board so determines. Do you understand these principles?

YES ☒ NO ☐

36. Do you understand that there are **other direct consequences** that arise from entry of a felony charge that are explained below.

YES ☒ NO ☐

37. As a term of your plea agreement, are you pleading guilty to more than one crime?

YES ☐ NO ☒

If so, do you understand that your sentences for each crime could be ordered to be served either **concurrently** (at the same time) or **consecutively** (one after the other)?

YES ☒ NO ☐

38. Do you understand that if you plead guilty and you commit crimes in the future, this conviction would be considered in the future case and could cause a more severe penalty in the future case?

YES ☒ NO ☐

ADDITIONAL DIRECT CONSEQUENCES OF A GUILTY PLEA

39. Are you currently on probation or parole?

YES ☒ NO ☐

If so, do you understand that a plea of guilty in this case could be the basis of a violation of that **probation or parole (WHICH MEANS THAT ANY SUSPENDED SENTENCE COULD BE IMPOSED AND ANY PAROLE REVOKED)**?

YES ☒ NO ☐

40. Are you aware that if you are not a **citizen** of the United States, the entry of a plea or making of factual admissions could: (1) result in your deportation or removal from the United States; (2) preclude you from obtaining legal status in the United States; or (3) prevent you from obtaining United States citizenship?

YES ☒ NO ☐

41. Does the crime to which you will plead guilty require you to register as a **sex offender**? (I.C. § 18-8304)

YES ☒ NO ☐

42. Are you aware that if you plead guilty you may be required to pay **restitution** in this case? (I.C. § 19-5304)

YES ☒ NO ☐

43. Are you pleading guilty to a crime for which you may be required to pay the **costs of prosecution and investigation**? (I.C. § 37-2732(k)), (I.C.R. 33(d)(2))

YES ☐ NO ☒

If so, have you and the state agreed upon the amount of this reimbursement? .. YES ☐ NO ☐
If you have, what is the amount?

44. Have you agreed to pay restitution as a condition of your plea agreement?YES NO AM

If so, to whom and how much? _____

45. If the amount of restitution has not been agreed upon, do you understand that you cannot withdraw your guilty plea even if the restitution amount is determined to be higher than you thought it might be or should be?YES NO AM

46. Is a **driver's license suspension** required as a result of a guilty plea in this case?YES NO AM

If so, for how long must your license be suspended? (1) YEAR

47. Is there a **mandatory license suspension** applicable to this case?YES NO AM

If so, do you understand that if there is a mandatory license suspension applicable to this case that you cannot under any circumstances have restricted privileges during this period of suspension?YES NO AM

48. Is there a **discretionary license suspension** applicable to this case?YES NO AM

If so, do you understand that the decision to grant you restricted driving (IF ALLOWED BY LAW) privileges is up to the Judge?YES NO AM

49. Are you pleading guilty to a crime for which a mandatory domestic violence, substance abuse or psychosexual **evaluation** is required? (I.C. § 18-918(7)(a)), (I.C. § 18-8005(9)), or (I.C. § 18-8317)YES NO AM

50. Are you pleading guilty to a crime for which you will be required to submit a **DNA sample** and **Right Thumbprint** impression to the state? (I.C. § 19-5506)YES NO AM

51. Are you pleading guilty to a crime for which the court could impose a **fine** for a crime of violence of up to \$5,000, payable to the victim of the crime? (I.C. § 19-5307)YES NO AM

52. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to **vote** in Idaho? (Id. Const. art.6, §3)YES NO AM

53. Do you understand that if you plead guilty to a felony during the period of your sentence, you will lose your right to hold **public office** in Idaho? (Id. Const. art.6, §3)YES NO AM

54. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to perform **jury service** in Idaho? (ID. CONST. art. 6, § 3)YES NO AM

55. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry **firearms**? (I.C. § 18-310)YES NO AM

RELATIONSHIP WITH YOUR ATTORNEY

56. Have you had sufficient time to discuss your case with your attorney?YES NO AM

Page 6 of 10

Defendant's Initials _____

57. Have you had adequate time to fill out this form? YES DM NO ____
58. Have you had adequate access to your attorney's assistance in filling out this form? YES DM NO ____
59. Have you told your attorney everything you know about your case? YES DM NO ____
60. Is there anything you have requested your attorney do that has not been done? . YES ____ NO DM

If yes, please explain. _____

61. Your attorney can obtain various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called "discovery." Have you reviewed the evidence provided to your attorney during discovery? YES DM NO ____
62. Are there any additional items you want to view before entering a guilty plea..... YES ____ NO DM

If so, what? _____

63. Do you want your attorney to undertake further investigation of your case? YES ____ NO ____
64. Has your attorney properly or adequately investigated your case? YES DM NO ____
65. Have you told your attorney about any witnesses, including any who would show your innocence?..... YES ____ NO DM
66. Have you and your attorney discussed any potential motions that you would like filed in your case? YES ____ NO ____
67. Are there any motions or other requests for relief (including motions to suppress or dismiss) that you believe should still be filed in this case? YES ____ NO DM

If so, what motions or requests? _____

68. Do you understand that no one, including your attorney, can force you to plead guilty in this case? YES DM NO ____

69. Are you satisfied with your attorney's representation? YES DM NO

If not, please state why you are dissatisfied _____

70. Has your attorney made any promises or commitments about what your sentence would be?

..... YES NO DM

ENTRY OF PLEA

71. Are the answers throughout this form your own answers? YES DM NO

72. Are you entering your plea freely and voluntarily? YES DM NO

73. Do you understand the consequences of entering a guilty plea? YES DM NO

74. Why are you pleading guilty to the charge(s) in this case? I'M GUILTY OF
ELUENING A POLICE OFFICER

75. Are you pleading guilty just to get out of jail? YES NO DM

76. Do you understand that even if the state agrees to release you from jail pending sentencing that the court may decide not to release you? YES DM NO

77. Are you pleading guilty "just to get this over with"? YES NO DM

78. Have you read all of the charges in the information or indictment filed against you? YES DM NO

79. Are you admitting to all of the elements of the crime(s) to which you are pleading guilty? YES DM NO

80. Are you pleading guilty because you did commit the acts alleged in the information or indictment? YES DM NO

81. Or are you pleading guilty because you are entering an Alford Plea? YES NO DM

82. Explain what you did that makes you guilty of the charges against you. (NON ALFORD PLEA)

I RAN FROM THE IDAHO STATE POLICE ON THE
INTERSTATE.

83. If you are entering an Alford Plea, do you understand that the court will consider you just as guilty as if you enter a non-Alford Plea? YES NO AM

84. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue(s) with your attorney? YES NO AM

If so, what? _____

85. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter? YES NO AM

86. Do you need any additional time before you enter your guilty plea(s)? YES NO AM

87. Do you understand that if the Court accepts your guilty plea(s) that you may not be able to withdraw your plea(s) at a later date? YES NO AM

88. Is there any other matter not covered by your answers to the foregoing questions that affects your decision to plead guilty that you want to tell the Court about? YES NO AM

If so, what? _____

89. I hereby enter a plea of Guilty to the Charge(s) of: FELONY ELUATING

I have answered the questions on pages 1-10 of this Guilty Plea Advisory form truthfully, understand all of the questions and answers herein, have discussed each question and answer with my attorney, and have completed this form freely and voluntarily **WITH A COMPLETE UNDERSTANDING OF THE CHARGE(S) TO WHICH I AM PLEADING GUILTY AND WITH KNOWLEDGE OF THE POTENTIAL CONSEQUENCES OF THIS PLEA.** Furthermore, no one has forced me or threatened me to plead guilty.

Dated this 29 day of FEBRUARY, 2016

[Signature]
DEFENDANT

I hereby acknowledge that I have discussed in detail the foregoing questions and answers with my client.

[Signature]
DEFENDANT'S ATTORNEY

POST PLEA RIGHTS

A presentence investigation will be ordered by the Court unless both you and the State waive that report and the Court approves that waiver. The Court may order evaluations as part of this investigation **AND THESE REPORTS WILL BE USED TO DETERMINE YOUR SENTENCE.** You have the right to remain silent during all proceedings and interviews from now until sentencing WHICH INCLUDES THE PRESENTENCE INVESTIGATION AND ANY COURT ORDERED EVALUATIONS.

The information in the presentence interview and any evaluations (which will include any statements you make in these processes) will be used by the Court in determining your sentence. In particular if you are ordered to undergo a psychosexual evaluation (which can include a polygraph examination), a domestic violence evaluation, a substance abuse evaluation or a mental health examination (which can include a psychological or psychiatric examination) you will be asked extensive questions and your answers to those questions may be used against you during sentencing.

1. Have you discussed the right to remain silent with your attorney? YES NO
2. Do you understand the nature of these rights? YES NO
3. Do you understand that you may waive these rights? YES NO
4. Have you waived any of these rights in your plea agreement? YES NO
5. Do you have any questions concerning either these rights or the waiver of these rights?
..... YES NO
6. Have you discussed with your attorney your rights regarding your attorney's attendance and presence during the presentence investigation or these various evaluations? ... YES NO
7. Do you want the court to order any particular evaluations to assist the court in determining your sentence in this case?..... YES NO
If yes, which evaluations and why. _____

I acknowledge the foregoing post plea rights.

Justin Rogers
Defendant


DATE 2/29/2016

I acknowledge that I have discussed the post plea rights listed above with my client.

[Signature]
Defendant's Attorney

DATE 2-29-2016

COURT MINUTES

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 4/11/2016 04:00 PM
Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Sentencing

Hearing date: 4/11/2016

Time: 11:22 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Michael Tribe

Defendant is NOT PRESENT

Court calls case, notes that defendant was not present earlier and inquires if defendant is present now

Mr. Jensen responds, defendant has not made appearance and no contact now

Court will issue bench warrant based on failure to appear, sounds like other states may be looking for him as well, and no bond on warrant

11:24 a.m. recess

MINIDOKA COUNTY MAGISTRATE COURT MINUTES

5TH JUDICIAL DISTRICT
MINIDOKA COUNTY IDAHO
FILED

CASE #CR-2010-550

ACTION: ARRAIGNMENT

DATE: April 15, 2016

JUDGE: Mark Hodges

TIME: 11:54 A.M.

2016 APR 15 PM 12:57

Clerk: BY: [Signature] CLERK
[Signature] DEPUTY

STATE OF IDAHO,

vs.

DUSTIN JADE MORGAN

Defendant

OFFENSE (S) FAIL TO APPEAR - ELUDING

<u>11:55</u>	Right by Video		Private Attorney	<u>11:56</u>	Guilty
<u>11:55</u>	Penalties	<u>11:56</u>	Waived Counsel		Not Guilty
	F.T.A.		P.D. Appointed		Sentenced
	Bench Warrant		Pre-trial		Preliminary

BOND: \$ 500

INTERPRETER: Robert F. Nevarez
Other

<u>11:56</u>	<u>Court reviews rights</u>
<u>11:57</u>	<u>Recess</u>
	<u>Court sets hearing for: April 25, 2016 @ 9 a.m.</u>
	<u>Sentencing</u> <u>E. Minidoka</u>
	Must test _____ times at Misdemeanor Probation; if fails to test or tests positive, defendant to be rearrested and bond set at _____. (Defendant is responsible for confirmation testing if requested by defendant.)
DOB:	
ADDRESS:	<u>1128 Whispering</u> <u>Pocatello Id 83202</u>
EMPLOYED:	

**IN THE DISTRICT COURT, FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, MINIDOKA COUNTY**

5TH JUDICIAL DISTRICT
MINIDOKA COUNTY IDAHO
FILED

State of Idaho,

Case No. CR-2010-530

2016 APR 15 PM 12:58

-vs-

Arraignment / 1st Appear. Minutes / Order

CLERK

DUSTIN JADE MORGAN
Defendant.

() Interpreter Required _____ DEPUTY

Today's Date: 4/15/2016Defendant's Mailing Address: 1128 Highway 216, Pocatello, 83202

In custody appearance: ☒ Yes () No
Prob. cause affidavit on file: ☒ Yes () No

☒ Defendant Failed to Appear
☒ Refer to Pres. for I.C. 19-3901A charge

Defendant advised of rights:

() in person

() in writing

☒ by videotape

Right to remain silent and not incriminate self

Right to jury trial

Right to confront and cross-examine evidence and witnesses

Right to be represented by counsel

Right to speedy trial

Right to present evidence on own behalf

State must prove guilt beyond a reasonable doubt

Right to appeal

	Charge(s)	I.C. Section	Maximum Penalty
I.	FTA.		6 months jail, fine
II.			
III.			fine
IV.			
V.			

Counsel: ☐ Pub Def ☐ Conflict P.D. ☐ P.D. denied ☒ Waives counsel ☐ Retain counsel: _____

Plea Entered [Misdemeanor]: ☐ Not Guilty ☒ Guilty ☐ Plea Entry Cont'd: _____, 20__

Next Court Date: Monday, April 25, 2016 Time: 9:00 A.m.

() Pretrial Conference () Preliminary Hrg. ☒ Sentencing () Other _____

Bail: ☒ Cash, surety or real property \$ 500 () O.R. () Additional conditions below:

- ☒ No new felony or misdemeanor charges.
- ☒ Stay in contact with your attorney.
- ☒ Appear for all future court proceedings.
- ☒ Do not appear for court with any amount of alcohol or illegal drugs in your system.
- ☐ Do not consume alcohol or illegal drugs or possess any controlled substance without a valid prescription.
- ☐ Do not frequent any establishment where primary source of income is sale of alcohol.
- ☐ Submit to random testing for alcohol or drugs _____ times/weekly at _____, per law enforcement.
- ☐ Report to Misdemeanor Probation within _____ hours for monitoring of all conditions of pretrial release.
- ☐ Do not operate a motor vehicle with any amount of alcohol or illegal drugs in your system.
- ☐ Comply with the requirements of any GPS/electronic monitoring.
- ☐ You waive extradition to return to Idaho for all court proceedings if you leave the State of Idaho.
- ☐ Other: _____

These conditions are in addition to any other conditions imposed by the court. Violation of these conditions will result in the revocation of your release and a warrant for your arrest. If conditions of release include testing, defendant is responsible for payment of further confirmation testing in the event results are positive or if requested by defendant.

() No Contact Order Issued - see additional Order

IT IS SO ORDERED: 4-15-16JUDGE: [Signature]

I agree to these conditions of release and understand that my release can be revoked if I violate them and I would be rearrested with BAIL SET AT \$ 500 Defendant: Dustin Morgan

Court Minutes

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY, MAGISTRATE DIVISION

5TH JUDICIAL DISTRICT
MINIDOKA COUNTY IDAHO
FILED

2016 APR 15 PM 12:58

State of Idaho,	)	Case No. CR-2010-550	BY _____
Plaintiff,	)	ORDER	CLERK
vs.	)		DEPUTY
<u>DUSTIN JADE MORGAN,</u>)		
<u>Defendant.</u>)		

The Court enters the following order(s) in this matter:

() The Public Defender is appointed to represent the Defendant. The Defendant is required to meet with the Public Defender today in designated area immediately following arraignment. If the Defendant is in custody, the Defendant is required to meet with the Public Defender no later than 24 hours following release from custody. Reimbursement by defendant may be required for public defender services.

() _____ Conflict Public Defender is appointed to represent the Defendant. The Defendant is required to contact the Conflict Public Defender within 24 hours and set up an appointment to meet with the Conflict Public Defender before the next scheduled hearing. Reimbursement by defendant may be required for public defender services.

() The defendant is ordered to personally appear for the following Court proceedings in the Sherman J. Bellwood Judicial Building, Rupert, Idaho on the date and at the time stated below:

Date: Monday, April 25, 2016 Time: 9:00 A.m.

- () Preliminary Hearing
() Pre-trial Conference
() Probation Violation Hearing
(X) Sentencing

- ESTIMATED FINES/COSTS: \$ _____ ☐ Need not appear if paid

- () Review for ☐ Payment of fines/costs ☐ Probation ☐ Incarceration

() _____

ORDERED this date: 4-15-16

[Signature]
Judge

**NOTICE: FAILURE TO COMPLY WITH THE ABOVE ORDER WILL RESULT IN THE
ISSUANCE OF A WARRANT FOR YOUR ARREST. DEFENDANT MUST INFORM COURT
OF CHANGE OF ADDRESS.**

DEFENDANT CERTIFIES RECEIPT THIS DATE OF THE ABOVE ORDER.

Date: 4/15/16

Defendant's Signature: [Signature]

Mailing Address: 11228 W. H. J. P. Ave. (CRS)

PRATELLO ID 83202

Phone: 208-899-7202

FILED-DISTRICT COURT

CASE #

TIME 5:05 pm

APR 15 2016

PATTY TEMPLE, CLERK

J, DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff

vs.

DUSTIN JADE MORGAN,

Defendant

) Case No. Cr-2010-550
)
)
)
)
)
)
)
)
)
)

Order

The Defendant having entered a plea of guilty has no right to be admitted to bail; bail is allowed in the discretion of the Court. The Defendant failed to appear at sentencing. This Court finds that bail is not appropriate. The Defendant shall be held without bail pending sentencing.

DATED this 15th day of April, 2016.

Jonathan P. Brody
Jonathan P. Brody, District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of April 15, 2016, she caused a true and correct copy of the foregoing ORDER to be served upon the following persons in the following manner:

Lance Stevenson (x) eMail

Kent Jensen (x)-email
Attorney

MCCJC (x)-email

Dated this 15th day of April 15, 2016



Laurie McCall, Deputy Clerk

COURT MINUTES

FILED-DISTRICT COURT
CASE # _____
TIME _____

APR 25 2016

PATTY TEMPLE, CLERK

 DEPUTY

R-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Sentencing

Hearing date: 4/25/2016

Time: 9:07 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Laurie McCall

Tape Number: saved to server

Defense Attorney: Kent Jensen

Prosecutor: Mike Tribe

Defendant present-in custody

Court calls case: Re:sentencing

Mr. Jensen-no PSI available-has not been able to arrange-would like done as quickly as possible.

Court:has been ordered-set for 5-6 weeks Will set for June 6th.

Mr. Jensen—responds. Will try to get psi done earlier—Will set earlier if can.

9:09 a.m. Recess

COURT MINUTES

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Sentencing

Hearing date: 6/1/2016

Time: 9:08 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Lance Stevenson

Defendant is present in custody

Court calls case, set for sentencing but haven't gotten PSI, will come very soon but do not yet have it, inquires

Mr. Jensen responds, cites considerations, spoke with PO and prosecutor in Montana and they intend to take back to Montana, defendant asks to allow to go forward with sentencing and let PSI to come into record later,

Mr. Stevenson responds and reviews his considerations for recommendations

Court inquires of Mr. Jensen re: understanding of what Montana is thinking of doing

Mr. Jensen responds that prosecutor was looking at 5 to 10 with pre-release program which is similar to old work program we used to have, explains, could wait until Monday if Court would prefer

Mr. Stevenson has 135 days' calculated time served

Court comments, wants to see PSI, willing to try and do that today, could trail matter today or could just set on Monday

Mr. Stevenson asks to set on Monday to allow all parties time to review PSI

Mr. Jensen responds, defendant will wait until Monday

Court comments re: credit for time served and inquires if any objection by defense

Mr. Jensen does not think has any objection to time calculated

Court will reset to 6-6-16

9:12 a.m. recess

COURT MINUTES

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 6/6/2016 04:26 PM

Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

CR-2010-0000550

State of Idaho vs. Dustin Jade Morgan

Hearing type: Sentencing

Hearing date: 6/6/2016

Time: 9:33 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Tape Number: recorded to server

Defense Attorney: Kent Jensen

Prosecutor: Michael Tribe

Defendant is present in custody

Court calls case, set for sentencing.

- Counsels are ready to proceed

Court notes started talking about matter last week, set over today, plea entered on 2-29-16 with right to appeal legal issues, believe recommendation are open and had discussion last week with Mr. Stevenson, inquires of Mr. Tribe

Mr. Tribe responds, unless there was some discussion that is not aware of then will be incarceration with 5-2-3 sentence,

Mr. Jensen responds, no discussion about different recommendation

Court review max penalty is 5 yrs. fine up to \$50,000 or both, max 3 yrs. DL suspension, and inquires - Mr. Jensen has no legal cause why cannot sentence cannot be imposed

Court inquires re: PSI - Mr. Jensen has received and reviewed - Defendant has read and reviewed with attorney

9:36 a.m. Mr. Jensen make corrections to PSI on page #14, #16 is currently taking Wellbutrin and Tylenol 3 for back injury, those are only corrections

Court inquires if taking meds prevents proceedings

Mr. Jensen responds, medications do not affect understanding or ability to proceed today, aside from corrections the defense agrees that court can rely on PSI for sentencing

Mr. Tribe has 145 days' time served as of today

Mr. Jensen responds re: time served, time served is touchy issue on this case, would recognize there is 145 days' local time, as balance gets applied may have bearing on appeal and want to make sure is part of record

Court responds

Mr. Jensen continues, no objection to local time, issues will come in on appeal based on court's prior rulings, will just admit to 145 days local time

Court responds, if defense argument is correct then defendant has topped out

- Mr. Jensen agrees, will just have to let play out on appeal

Mr. Tribe has no restitution request

9:41 a.m. Mr. Tribe makes state's argument for sentencing, cites considerations, based on PSI will be recommending 5-2-3 unified and to be imposed, cites further considerations for recommendation

9:43 a.m. Court refers to discussion held last week about Montana imposing sentence with something like a rider

Mr. Tribe has not been part of that discussion so no knowledge, continues comments for sentencing, not willing to recommend probation, asking for imposed sentence with credit for time served

9:44 a.m. Mr. Jensen makes defense argument for sentencing, cites considerations, suggest three options: 1) credit for time served, release on probation and would then be subject to Montana on their hold and they would put on their pre-release program explains discussions with prosecutor and PO in Montana,

Court inquires if there is a hold for Montana right now

Mr. Biggins is unaware but will check on that

Mr. Jensen notes that Defendant says he has never been served

Mr. Jensen continues argument, options; 2nd option would be a rider program here and then probation, continues comments re: warrant in Montana, prosecutor there did tell him there was a warrant issued but has not seen it, imposition of sentence will not serve ends of justice, has good family support, ask for opportunity to go on probation

9:51 a.m. Defendant addresses the court

Bailiff Mike Biggins informs Court that there is a fugitive from justice warrant that was sent to the Bannock County jail when he was there so if he is released here he would be served and taken to Montana

Mr. Jensen asks that any sentence imposed would be concurrent with Montana

9:53 a.m. Court makes comments, cites considerations and factors, comments to defendant, have considered sentencing options, cites to goals of sentencing, COURT ORDERS: sentence to unified 5 yrs. 3 determinate and 2 indeterminate, suspended, court costs, no fine, have to provide DNA and right thumb print sample, inquires re: statute retroactive for DNA

Mr. Tribe responds

Court comments further, believe would apply so ordering DNA and right thumb print sample but will not order restitution for it, suspends Driver's license for 3 yrs. beginning today, probation for 5 yrs. will be supervised probation, must sign agreement of supervision with department of correction and must check in with them within 48 hours of entering state of Idaho, stay out of trouble, get stuff done in Montana, if come back to Idaho will be supervised, explains sentence, will be given credit for 145 days' time served and if appeal is successful would be more than that and comments further re: appeal, have 42 days to appeal and discuss with attorney, expect to be taken by Montana and if not check in with Probation within 48 hours of release from jail here.

10:07 a.m. recess

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

Case No. CR-2010-550

vs.

DUSTIN JADE MORGAN,

Defendant.

DOB: [REDACTED]

JUDGMENT OF CONVICTION AND ORDER SUSPENDING SENTENCE

On 06/06/2016, the time fixed by the Court for pronouncing sentence upon the defendant, the Court noted the presence of the Prosecuting Attorney, Michael Tribe, and the defendant with counsel, Kent Jensen.

IT IS ADJUDGED that the defendant has been convicted upon a plea of guilty to the offense of Eluding, as charged in the Information, a violation of Idaho Code § 49-1404(2)(a).

The Court having asked whether the defendant had any legal cause why Judgment should not be pronounced against the defendant, and no sufficient cause to the contrary having been shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS FURTHER ADJUDGED AND ORDERED that the defendant be sentenced as follows to the custody of the Idaho State Board of Correction commencing on 06/06/2016:

<u>Minimum period of confinement:</u>	3 years
<u>Indeterminate period of confinement:</u>	2 years
<u>Total unified term:</u>	5 years

The Court **ORDERS** as follows:

Court Costs: The defendant shall pay all court costs for the conviction.

Credit for Time Served: The defendant is given credit for a total of 145 days served prior to the entry of this Judgment.

Driver's License Suspension: Pursuant to I.C. § ~~18-8005(6)~~ ⁴⁹⁻¹⁴⁰⁴⁽³⁾, the defendant's driver's license is absolutely suspended for a period of 3 years, beginning 06/06/2016.

Idaho DNA and Genetic Marker Database Act of 1996: Pursuant to I.C. §§ 19-5501, et seq., the defendant, having been convicted of a felony offense, is hereby ordered to provide a DNA sample and right thumbprint impression at a department of law enforcement designated location, which sample and impression shall be collected in accordance with the procedures established by the bureau of forensic services. If the defendant is not incarcerated at the time of sentencing, the defendant is hereby further ordered to report within ten (10) working days to the facility designated by the department of law enforcement for the collection of such specimens.

AND IT IS ORDERED that execution of the prison sentence of this judgment be suspended, and the defendant be placed on probation the defendant is placed on probation for a period of 5 years, beginning on 06/06/2016, under the control of the Idaho State Board of Correction, (I.C. § 19-2601(5), I.C.R. 33(d)), subject to the following terms:

Terms of Probation: If the Defendant is not in Montana, the Defendant is required to enter into and comply with an agreement of supervision with the Idaho Board of Correction. (I.C. § 19-2601(5)).

Special Condition of Probation: The Defendant is required to check in with probation and parole within 48 hours of entering the State of Idaho.

10 days jail as a condition of probation to be served as discretionary time if necessary pursuant to the rules and procedures for discretionary time.

IT IS FURTHER ORDERED that so long as the defendant abides by and performs all of the foregoing conditions, entry of judgment and sentence will continue to be **suspended**. Provided, however, that probation will not be terminated until the Court has both reviewed the performance of the probationer and has signed an order discharging the probationer. If any of the terms and conditions of probation are violated, the defendant will be brought before the Court for imposition of judgment and sentence.

IT IS FURTHER ORDERED that the parties return their respective copies of the presentence investigative reports to the deputy clerk of the court and use of said report shall thereafter be governed by I.C.R. 32(h)(1), (2), and (3).


IT IS FURTHER ORDERED that any and all bonds are hereby exonerated. However, if the defendant paid a cash bond, deposited by or on behalf of the defendant, the Clerk shall apply the money (cash bond) to the payment of the costs and fines imposed in this case and refund the surplus, if any, to the party posting the deposit. I.C. § 19-2923.

RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS

The Right: The Court advised the defendant, of the right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.C.R. 33(a)(3), I.A.R. 14(a).

In Forma Pauperis: The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3), I.C. § 19-852(a)(1) and (b)(2).

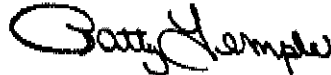
Sentenced and dated 06/06/2016.


JONATHAN BRODY
District Judge


CERTIFICATE OF MAILING

I, Janet Sunderland, the undersigned authority, do hereby certify that I mailed, on June 6, 2016, one copy of the: JUDGMENT OF CONVICTION AND ORDER SUSPENDING SENTENCE as notice pursuant to Rule 77(d) I.C.R. to each of the following:

Prosecuting Attorney: Lance Stevenson	<u>X</u>	Email	<u>kbowm@co.minidoka.id.us</u>
Defense Attorney: Kent Jensen	<u>X</u>	Email	<u>kent7@gmail.com</u>
Idaho Department of Corrections Central Records	<u>X</u>	Email	<u>centralrecords@idos.idaho.gov</u>
Idaho Department of Corrections Sentencing Team	<u>X</u>	Email	<u>ccdsentencingteam@idoc.idaho.gov</u>
Idaho Department of Probation and Parole	<u>X</u>	Email	<u>mfitzhug@idoc.idaho.gov</u>
MCCJC – Harper, Johnson, Rasmussen, Sergeant's Computer	<u>X</u>	Email	<u>mccjc@cassiacounty.org</u>


Clerk of the District Court
Minidoka County, Idaho

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE
5th JUDICIAL DISTRICT
MINIDOKA COUNTY, IDAHO
On: 6/7/2016 01:55 PM
Patty Temple
CLERK OF THE DISTRICT COURT
Filed By: 

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ROBERT S. HEMSLEY, *Chief Deputy Prosecuting Attorney (ISB#7955)*
MICHAEL P. TRIBE, *Chief Deputy Prosecuting Attorney (ISB#6816)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

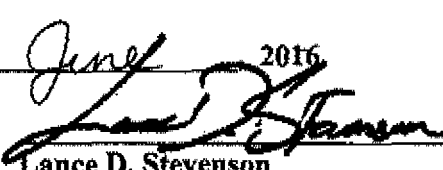
ATTORNEYS FOR THE STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

STATE OF IDAHO,)	Case No. CR-2010-550
)	
Plaintiff,)	
)	
vs.	)	<u>MOTION TO DISMISS</u>
)	
DUSTIN JADE MORGAN,)	
)	
Defendant.)	

COMES NOW, Lance D. Stevenson, Minidoka County Prosecuting Attorney, and moves the Court to dismiss Count II of the Information in the above-entitled matter, in which the defendant, Dustin Jade Morgan is charged with the public offense of DRIVING WITHOUT PRIVILEGES (MORE THAN TWO (2) WITHIN FIVE (5) YEARS), I.C. 18-8001(5), pursuant to plea negotiations.

DATED this 7 day of June 2016


Lance D. Stevenson
Prosecuting Attorney

FILED-DISTRICT COURT

CASE #

TIME

9:30 am

Jun 08 2016

PATTY TEMPLE, CLERK

DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, Prosecuting Attorney (ISB#7733)

ROBERT S. HEMSLEY, Chief Deputy Prosecuting Attorney (ISB#7955)

MICHAEL P. TRIBE, Chief Deputy Prosecuting Attorney (ISB#6816)

715 G. STREET, P. O. Box 368

Rupert, ID 83350

Office: (208)436-7187

Facsimile: (208) 436-3177

ATTORNEYS FOR THE STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

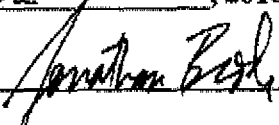
Case No. CR-2010-550

ORDER TO DISMISS

The court having heard the motion heretofore made in the above-entitled case by Lance D. Stevenson, Minidoka County Prosecuting Attorney, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED pursuant to ICR 48, that the aforementioned Count II of the Information be dismissed, and the bond heretofore posted, if any, be exonerated.

DATED this 8 day of June, 2016.



District Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 8th day of June, 2016, I mailed a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Kent D. Jensen - e mail
P.O. Box 276
Burley, ID 83318

Minidoka County Prosecuting Attorney - e mail
P. O. Box 368
Rupert, ID 83350

- ☐ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.
- ☐ By Hand delivering copies of the same to the office of the attorneys(s) at his office at the address stated above.
- ☐ By electronically delivering copies of the same via scanned documents.
- ☐ By placing copies of the same in the Public Defender's basket located in the Clerk's Office in the Judicial Annex, Minidoka County Courthouse.
- ☐ By telecopying copies of the same to said attorneys(s) at the telecopied number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

Patty Temple, Clerk

By: *Lm Call*
Deputy Clerk

Kent D. Jensen #4424
P.O. Box 276
Burley, Idaho 83318
Telephone:(208) 219-7571
Facsimile:(208) 277-3002
kentj7@gmail.com

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2016 JUN 16 AM 9:36

FILED-DISTRICT COURT
CASE #
TIME 4:15 pm

JUN 14 2016

PATTY TEMPLE, CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE, DEPUTY
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Case No. CV 2010-550

Plaintiff,

NOTICE OF APPEAL

vs.

Supreme Court No. 44273

DUSTIN JADE MORGAN,

Defendant.

TO: THE STATE OF IDAHO, THE CLERK OF MINIDOKA COUNTY DISTRICT
COURT AND THE CASSIA COUNTY PROSECUTOR, LANCE STEVENSON.

NOTICE IS HEREBY GIVEN THAT:

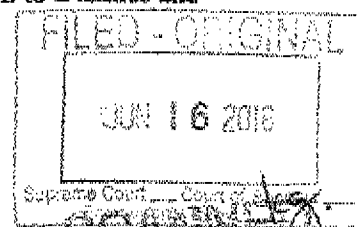
1. The Appellant, Dustin Jade Morgan, appeals against the above named respondent to the Idaho Supreme Court from the Order denying the Appellant's Motion to Dismiss, heard by the court on August 24, 2015 and September 14, 2015, which order was entered in the above entitled action on the 30th day of September, 2015, by the Honorable Jonathan Brody. The Defendant also appeals the Order of the Court denying the Defendant's Motion to Reconsider or in the alternative Second Motion to Dismiss, heard on November 12, 2015 and the Order denying the same issued on November 18, 2015.

2. That the party has the right to appeal to the Idaho Supreme Court, and the issues described in paragraph 1 above are appealable pursuant to Idaho Appellate Rule 11.

3. The appellant appeals the decision of the district court denying his Motion to Dismiss and his Motion to Reconsider or in the alternative Second Motion to Dismiss.

4. There has been no order sealing any portion of the record in this case.

NOTICE OF APPEAL -1



5. (a) Is a reporter's transcript requested? Yes.

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

The entire reporter's standard transcript as defined in Idaho Appellate Rule 25(a), including all hearings held before the district court in this case.

6. The appellant has no request to include additional documents in the Clerk's record in addition to those automatically included under Idaho Appellate Rule 28.

7. I certify:

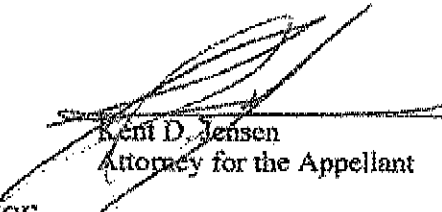
(a) That a copy of this notice of appeal has been served on the reporter.

(b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's or agency's record has been or will be paid.

(d) That service has been made upon all parties required to be served pursuant to Rule 20.

Dated this 12/17 day of June, 2016


Kent D. Jensen
Attorney for the Appellant

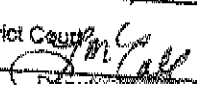
CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of June, 2016, I served the foregoing document upon the attorney for the State of Idaho by facsimile addressed as follow:

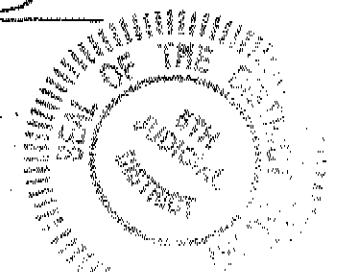
Minidoka County Prosecutor
208-436-3177


Kent D. Jensen
Attorney for the Appellant

State of Idaho)
County of Minidoka) ss.
I hereby certify the foregoing to be a full, true
and correct copy of the original on file in the
above entitled action

Dated 6-15 20 16
PATTY TEMPLE
Clerk of the District Court
By 

NOTICE OF APPEAL - 2



Kent D. Jensen (LSB #4424)
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 219-7571
Fax: (208) 277-3002

CASE #
TIME 4:15 PM

JUN 14 2016

PATTY TEMPLE, CLERK
DEPUTY

IN THE DISTRICT COURT OF FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

Case No. CR-2010-550

**MOTION FOR APPOINTMENT
OF STATE APPELLATE
PUBLIC DEFENDER**

Comes now, Kent D. Jensen, counsel for the Defendant in the above-entitled action, and moves the Court for an Order appointing the State Appellate Public Defender's Office to represent the defendant, Dustin Jade Morgan in all matters relating to Defendant's appeal to the Idaho Supreme Court, a Notice of appeal having been filed with the Clerk of the above Court on June 14, 2016.

This motion is based on the record, documents and pleadings on the file herein, together with the law in such cases.

DATED this 16 day of June, 2016.

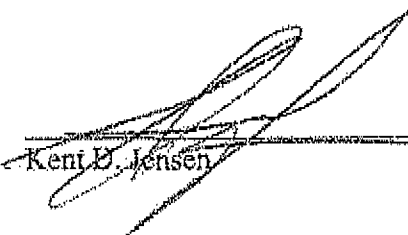
Kent D. Jensen

SCANNED

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2016, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Sara B. Thomas X U.S. Mail
State Appellate Public Defender
P.O. Box 2816
Boise, ID 83701
2. Lance Stevenson X Courthouse Box
Prosecuting Attorney
P.O. Box 368
Rupert, ID 83350
3. Kent Jensen X Courthouse Box
Attorney at Law
2042 Overland Avenue
P.O. Box 276
Burley, ID 83318
4. Dustin Morgan X U.S. Mail
c/o MCCJC
1415 Albion Avenue
Burley, ID 83318
5. Court Reporter X Courthouse Box
PO Box 368
Rupert, ID 83350
6. Stephen Kenyon X U.S. Mail
Clerk of the Supreme Court
P.O. Box 83720
Boise, ID 83720-0101
7. Lawrence Wasden X U.S. Mail
Idaho Attorney General
P.O. Box 83720
Boise, ID 83720-0010


Kent D. Jensen

FILED-DISTRICT COURT

CASE #

TIME

9:10 am

JUN 15 2016

PATTY TEMPLE, CLERK

DEPUTY

Kent D. Jensen (ISB #4424)
P.O. Box 276
Burley, Idaho 83318
Telephone: (208) 219-7571
Fax: (208) 277-3002

IN THE DISTRICT COURT OF FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

DUSTIN JADE MORGAN,

Defendant.

Case No. CR-2010-550

ORDER APPOINTING
STATE APPELLATE
PUBLIC DEFENDER

The court being advised in law and in the premises and upon the Defendant's motion to
appoint the appellate public defender and for good cause shown issues the following order

IT IS HEREBY ORDERED that the appellate public defender is hereby appointed to
handle the appeal of this case.

DATED this 15th day of June, 2016.


Honorable Jonathan Brody

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2016, I caused to be served a true and correct
copy of the foregoing document, by the method indicated below, and addressed to the following:

1. Sara B. Thomas *- mail*
State Appellate Public Defender
P.O. Box 2816
Boise, ID 83701

2. Lance Stevenson *- email*
Prosecuting Attorney
P.O. Box 368
Rupert, ID 83350

3. Kent Jensen *- email*

1 Attorney at Law
2 2042 Overland Avenue
3 P.O. Box 276
4 Burley, ID 83318

4 4. Dustin Morgan *- ~~not~~ email*
5 c/o MCCJC
6 1415 Albion Avenue
7 Burley, ID 83318

8 5. Maureen Newton *- email*
9 Court Reporter
10 PO Box 368
11 Rupert, ID 83350

12 6. Stephen Kenyon *- mail*
13 Clerk of the Supreme Court
14 P.O. Box 83720
15 Boise, ID 83720-0101

16 7. Lawrence Wasden *mail*
17 Idaho Attorney General
18 P.O. Box 83720
19 Boise, ID 83720-0010

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Jim Call

Deputy Clerk

ERIC D. FREDERICKSEN
Interim State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellant Public Defender
I.S.B. #6406
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS
FILED-DISTRICT COURT
CASE #

2016 JUL 13 AM 9:20 TIME 3:00 pm

JUL 14 2016

PATTY TEMPLE, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DUSTIN JADE MORGAN,

Defendant-Appellant.

CASE NO. CR 2010-550

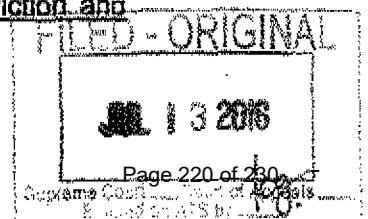
S.C. DOCKET NO. 44273

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, LANCE D. STEVENSON, PROSECUTING ATTORNEY, P.O. BOX 368, RUPERT, ID 83350, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Order denying the Appellant's Motion to Dismiss, heard by the court on August 24, 2015 and September 14, 2015, which order was entered in the above entitled action on the 30th day of September, 2015, the Honorable Jonathan Brody. The Defendant also appeals the Order of the Court denying the Defendant's Motion to Reconsider or in the alternative Second Motion to Dismiss, heard on November 12, 2015 and Order denying the same issued on November 18, 2015 Judgment of Conviction and



Order Suspending Sentence entered in the above-entitled action on the 6th day of June, 2016, the Honorable Jonathan Brody, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-8).

3. ~~The appellant appeals the decision of the district court deny his Motion to Dismiss and his Motion to Reconsider or in the alternative his Second Motion to Dismiss.~~ A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in dismissing the Appellant's Motion to Dismiss?

(b) Did the district court err in dismissing the Appellant's Motion to Reconsider?

(c) Did the district court abuse its discretion by imposing an excessive sentence?

4. ~~There has been no order sealing any portion of the record in this case.~~
There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. (a) Is a reporter's transcript requested? Yes.

(b) ~~The Appellant's requests the preparation of the following portions of the reporter's transcript:~~

~~The entire reporter's standard transcripts as defined in Idaho Appellant Rule 25(a), including all hearings held before the district court in this case.~~

Reporter's Transcript. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a d). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) Motion Hearing held on August 24, 2015 (Court Reporter: Maureen Newton, no estimation of pages are listed on the Register of Actions);
- (b) Motion to Dismiss Hearing held on September 14, 2015 (Court Reporter: Maureen Newton, no estimation of pages are listed on the Register of Actions);
- (c) Motion to Dismiss Hearing held November 12, 2015 (Court Reporter: Maureen Newton, no estimation of pages are listed on the Register of Actions).
- (d) Change of Plea Hearing held on February 29, 2016 (Court Reporter: Maureen Newton, no estimation of pages are listed on the Register of Actions); and
- (e) Sentencing Hearing held on June 6, 2016 (Court Reporter: Maureen Newton, no estimation of pages are listed on the Register of Actions); and

6. Clerk's Record. ~~The appellant has no request to include additional documents in the Clerk's record in addition to those automatically included under~~

Idaho Appellant Rule 28. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Memorandum in Support of Motion to Dismiss filed August 17, 2015;
- (b) Objection to Motion to Dismiss filed August 21, 2015;
- (c) Objection to Response filed September 11, 2015;
- (d) Memorandum in Support of Motion to Reconsider or in the Alternative Second Motion to Dismiss filed October 30, 2015;
- (e) Objection to Motion to Correct Record and Reconsider or in the Alternative Defendant's Second Motion to Dismiss filed November 6, 2015; and
- (f) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Maureen Newton;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A);

(c) That there is no appellate filing fee since this is an appeal in a criminal case (I.C. §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

(d) That arrangements have been made with Minidoka County who will be responsible for paying for the reporter's transcript, as the client is indigent, Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(h); and

(e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 12th day of July, 2016.



JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 12th day of July, 2016, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

KENT D JENSEN
ATTORNEY AT LAW
PO BOX 276
BURLEY ID 83318

MAUREEN NEWTON
COURT REPORTER
MINIDOKA COUNTY
PO BOX 368
RUPERT ID 83350

LANCE D STEVENSON
PROSECUTING ATTORNEY
PO BOX 368
RUPERT ID 83350

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court



MARY ANN LARA
Administrative Assistant

EDF/mal

State of Idaho)
County of Minidoka) ss.
I hereby certify the foregoing to be a full, true
and correct copy of the original on file in the
above entitled action

Dated 7-12-2016
PATTY TEMPLE
Clerk of the District Court
By Jim Call
Deputy



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

* * * * *

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

Dustin Jade Morgan,

Defendant/Appellant.

SUPREME COURT NO. 44273

District Court # CR-2010-550

CLERK'S CERTIFICATE TO
RECORD

STATE OF IDAHO)
)ss.
County of Minidoka)

I, Patty Temple, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that the above and foregoing record in the above-entitled case was compiled and bound under my direction, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by counsel.

I FURTHER CERTIFY that the Notice of Appeal was filed on the 14th day of June, 2016 and amended Notice of Appeal was filed July 12, 2016.

Clerk of the District Court

By:


Laurie McCall, Deputy Clerk

To: Lawrence G. Wasden
State Attorney General
PO Box 83720
Boise, ID 83720-0010

Sara Thomas
State Appellate Public Defender
PO Box 2816
Boise, ID 83707

Supreme Court Docket No. 44273
Minidoka County Case No. CR2010-550

STATE OF IDAHO
Plaintiff/Respondent,
Vs.
Dustin Jade Morgan,
Defendant/Appellant.

NOTICE OF FILING OF CLERK'S RECORD AND TRANSCRIPT ON CD

Notice is hereby given that one complete copy of the Limited CLERK'S RECORD is
Being sent to Counsels' of record. Be advised of the twenty-eight (28) day settlement period as
Required by IAR 29. Please file any objection to the record and transcript, including any requests for
corrections, deletions or additions with the District Court, together with a Notice of Hearing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court in Rupert,

Idaho, the 15th day of August, 2016.

Patty Temple
Clerk of the District Court

By: Laura McCas
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of August, 2016, I mailed a true, correct copy of the foregoing document to be served by U.S. first-class mail, postage pre-paid, upon the following unless a different method of service is indicated:

Lawrence G. Wasden
IDAHO ATTORNEY GENERAL
Po Box 83720
Boise, ID 83720-0010

Sara Thomas
STATE PUBLIC DEFENDER
PO Box 2816
Boise, ID 83707

SUPREME COURT
COURT OF APPEALS
PO Box 83720
Boise, ID 83720-0101

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

* * * * *

STATE OF IDAHO,	)	Supreme Court No. 44273
)	
Plaintiff/Respondent,	)	District Court No. CR2010-550
vs.)	
Dustin Jade Morgan	)	CLERK'S CERTIFICATE OF
	)	SERVICE
Defendant/Appellant.)	
_____)	

I, Laurie McCall, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that I have personally served or mailed by United States Mail, postage prepaid, one copy of the Clerk's Record to each of the parties or their attorney of record as follows:

Lawrence Wasden, Esq.	Sara Thomas
IDAHO ATTORNEY GENERAL	STATE APPELLATE PD
P. O. Box 83720	PO Box 2816
Boise, ID 83720-0010	Boise, ID 83707

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court in Rupert, Idaho, the 15th day of August, 2016.

PATTY TEMPLE
Clerk of the District Court

By: Laurie McCall
Laurie McCall, Deputy Clerk